

Sunshine Act Meetings

Federal Register

Vol. 53, No. 48

Friday, March 11, 1988.

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMISSION ON CIVIL RIGHTS

March 8, 1988.

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, March 18, 1988, 9:00 a.m.—5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of Last Meeting
- III. Briefing Panel #1: Reauthorization of the U.S. Commission on Civil Rights
- IV. Report of Commissioner Subcommittee Regarding Proposed Projects
- V. SAC Report: "Collecting Data on Bias-Related Incidents in Connecticut"
- VI. SAC Recharter
- VII. Presentations by SAC Chairs
- VIII. Briefing Panel #2: Reauthorization of the U.S. Commission on Civil Rights

PERSON TO CONTACT FOR FURTHER

INFORMATION: John Eastman, Press and Communications Division, (202) 376-8105.

William H. Gillers,
Solicitor.

[FR Doc. 88-5428 Filed 3-9-88; 10:02 am]

BILLING CODE 6335-01-M

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Friday, March 11, 1988, 2:00 p.m..

PLACE: 1776 G Street, NW., Board Room, Third Floor, Washington, DC.

STATUS: Closed.

CONTACT PERSON FOR MORE

INFORMATION: Alan Hausman, 1759 Business Center Drive, P.O. Box 4115, Reston, Virginia 22090, (703) 759-8405.

MATTERS TO BE CONSIDERED:

Minutes of February 8, 1988 Board of Directors, Meeting
President's Report
Dividend Policy
SOTP and Development Projects Briefing
Review of Financials for 1987

Date sent to Federal Register: March 8, 1988.

Maud Mater,
Secretary.

[FR Doc. 88-5432 Filed 3-9-88; 10:06 am]

BILLING CODE 6719-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. March 16, 1988.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Assessment of the Adequacy of the Commission's Requirements of (a) Casualty Coverage, (b) Civil Penalties, and (c) Administrative Proceedings in Relation to the Passenger Cruise Industry.

2. Baton Rouge Marine Contractors, Inc.—Proposed Investigation of Unfiled Agreement.

3. Docket No. 86-17—Mobil Oil Corporation v. Barber Blue Sea Lines—Review of Order of Dismissal.

4. Docket No. 86-30—Investigation of Unfiled Agreements—Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Lines, Inc.—Review of Initial Decision.

5. Docket No. 87-4—California Shipping Line, Inc. v. Korea shipping Corporation—Review of Order of Dismissal.

CONTACT PERSON FOR MORE

INFORMATION: Tony P. Kominoth,
Assistant Secretary, (202) 523-5725.
Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 88-5536 Filed 3-9-88; 8:45 am]

BILLING CODE 6730-01-M

Register Federal Register

Friday
March 11, 1988

Part II

Office of Management and Budget

Grants and Cooperative Agreements With
State and Local Governments; Revision
of Circular A-102; Notice

OFFICE OF MANAGEMENT AND BUDGET

Grants and Cooperative Agreements with State and Local Governments

AGENCY: Office of Management and Budget.

ACTION: Revision of Circular A-102.

SUMMARY: This notice sets forth the final revision of Office of Management and Budget Circular A-102, "Grants and Cooperative Agreements with State and Local Governments".

FOR FURTHER INFORMATION CONTACT: Jonathan Breul, Financial Management Division, Office of Management and Budget, Washington, DC 20503. (202) 395-3050.

SUPPLEMENTARY INFORMATION: An interagency task force under the President's Council on Management Improvement (PCMI) was established to review existing guidance for managing Federal aid programs. On June 18, 1984, OMB published a Notice in the *Federal Register* (49 FR 24956) announcing the review and seeking public comment on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress submitted several hundred comments.

Five agency-chaired teams studied the comments, Circular A-102, and the existing Federal agency regulations implementing it to develop and draft two products: a revised OMB Circular—addressed solely to Federal agencies, and a "common" government-wide regulation—addressed to State and local grantees. The proposed government-wide "common rule" stated the fiscal and administrative conditions governing grants to State and local governments and subgrantees which are State and local governments.

On March 12, 1987, the President directed OMB to revise Circular A-102 and all affected Federal agencies to simultaneously propose a common rule to adopt verbatim government-wide grants management terms and conditions. The revised Circular and common rule were to be proposed within 90 days, and issued final within one year.

OMB published a proposed revision to Circular A-102 as a Notice in the June 9, 1987 issue of the *Federal Register* (52 FR 21816-21818). Simultaneously in the same issue (52 FR 21820-21852), Federal grant-making agencies proposed a common rule.

Comments and Changes to the Proposed Revision

While OMB and the agencies received nearly 100 comments on the proposed common rule, only a handful addressed the revision to Circular A-102 itself.

Advance Public Notice and Priority Setting (paragraph 6b.) A number of Federal agencies questioned the need for, and type of official responsible for, advance public notice and priority setting in discretionary grant and cooperative agreement programs. Consistent with recent recommendations by the U.S. General Accounting Office (GAO) ("Discretionary Grants: Opportunities to Improve Federal Discretionary Award Practices"), this section aims to improve managerial accountability for the discretionary award process by emphasizing the need for upfront priority setting and policy-level sign-off on grant and cooperative agreement awards. "Policy-level official" was deliberately not defined in order for agency heads to determine the appropriate placement of such responsibilities. Such officials include program heads or political appointees located sufficiently high in an organization to ensure that funding priorities and actual awards are consistent with the agency's overall priorities. OMB is willing to work with agencies to identify appropriate officials where there is question.

Standard Forms for Applying for Federal Assistance (paragraph 6c.) Several Federal agencies, particularly those with programs which fund both governmental (State and local) and nonprofit grantees, requested *not* to use the standard application facesheet (SF-424) as well as the project approval checklist, budget sheet, and standard assurances in Attachment "M" to Circular A-102. They pointed out that unlike 1971, when Circular A-102 and the forms were originally developed, there is less duplication and overlap in Federal funding for grantees and consequently less need by grantees for uniform application forms. Further, OMB now reviews and approves all forms and application packages under the Paperwork Reduction Act of 1980. In recognition of these changes in the makeup of Federal assistance programs, the types of recipients receiving funding and the paperwork control authorities in OMB's Office of Information and Regulatory Affairs (OIRA), OMB asked for public comment on revised standard application forms in a May 29, 1987 Notice in the *Federal Register* (52 20178-20179).

The great majority of the over 80 public comments to the May 1987 Notice were concerned about the proposed financial reporting formats for the open-ended entitlement programs, rather than either the need for, or design of, the standard application forms. We attribute much of this lack of interest to the fact that, with the approval of OMB's Office of Information and Regulatory Affairs, few programs use the forms display in Circular A-102 "as is". In fact, aside from the SF-424 Facesheet, nearly every program extensively tailors the forms or develops its own instructions and supplemental program-specific requirements.

In recognition of current practice and approved forms, the proposed circular has been revised to require use of either (1) three types of pre-approved standard forms: facesheet, standard budget information (construction or non-construction) and standard assurances (construction or non-construction) or (2) forms approved by OMB under the Paperwork Reduction Act of 1980. Two forms previously displayed in Circular A-102, the Part II, "Project Approval Checklist," and Part IV, "Narrative," are eliminated. The contents of the latter are reflected as guidance to agencies in paragraph 6c. of the circular. Agencies are free to use the standard forms without further OMB clearance. Use of any other forms and application packages requires OMB approval and clearance under the Paperwork Reduction Act of 1980.

Exception to the common rule (paragraph 6g.) A number of grantees expressed concern that paragraph 6g. "Special Conditions or Restrictions," coupled with the corresponding "Exceptions" (§—6) and "High-Risk" (§—12) provisions of the common rule are loopholes which permit Federal agencies to circumvent the rule and impose additional or unwarranted requirements. In recognition of this concern and to permit oversight, the circular is revised to make it clear that agencies will document the use of these provisions.

Financial Status Reports (paragraph 7c.) A new section was added to require use of the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form. These forms are a revision of the SF-269 previously required under Circular A-102, with changes based on a May 29, 1987 *Federal Register* Notice (discussed above under "Standard Forms for Applying for Federal Assistance"). Both the short and long forms are simplified to require a single column rather than 6-column breakout of the status of funds.

The long form responds to recommendations from the GAO for a form which permits reporting matching as well as the various uses of program income. The new paragraph 7c expresses a longstanding but unstated prohibition against agencies using the form to collect object class expenditure data (e.g., expenditures broken down by personnel, travel, equipment, etc.). Further, it limits collection of expenditure detail by programs, functions or activities within the program or project, unless required by statute or regulation.

Contracting with small and minority firms, women's business enterprise and labor surplus area firms (paragraph 7d). A number of commenters expressed concern that the proposed circular did not contain policy language from the old Circular A-102 which encouraged use of small, minority women's and labor surplus area firms. This was true because all of the substantive requirements from Attachment "O" in the old A-102 for grantees to use such firms when possible were proposed to be codified in the June 9, 1988, 24-agency, common rule. Unfortunately, in the interest of streamlining the rule, the prefatory sentence explaining that this is national policy was dropped. To remove any doubt that grantees are encouraged to contract with such firms, the opening sentence concerning small and minority business, as well as those concerning women's enterprises and labor surplus area firms have been restored to the circular.

Program Income (paragraph 7e). A number of State and local grantees were concerned that agencies will only sparingly permit the use of the addition or matching share alternatives for use of program income. On the other hand, others such as the GAO supported the circular, stating that there should be a preference for deducting program income from program costs since this alternative will result in financial savings to the Federal Government and grantees. No change is made to the proposed circular. In the event this provision serves as a disincentive to earning such income, § —.25(g) of the common rule permits agencies to specify another alternative (or combination of alternatives) in program regulations or a specific grant agreement.

Site visits and technical assistance (paragraph 7f). Federal agencies expressed concern that the proposal would unduly restrict their ability to travel to grantee project sites or offer technical assistance. OMB proposed site visits "only as warranted by program or project needs" and restricted technical

assistance visits "only (1) in response to requests from recipients, or (2) when recipients are designated 'high risk.'" The proposed approach represented a departure from the original Circular A-102 which "encouraged" agencies to travel and offer technical assistance. Frequent travel and gratuitous technical assistance are no longer realistic given the Federal budget deficit and they are inconsistent with Federal deference to States' authority and competence under Federalism. However, to enable Federal agencies to address genuine program needs, an additional justification for technical assistance visits has been added based on "demonstrated program need."

Property Management (paragraph 8a). A number of commenters misinterpreted the provisions of the closeout provisions of the circular (as well as the property sections of the common rule) dealing with "federally owned property". They mistakenly concluded these provisions covered all grant-acquired property and equipment, not just that which is Federally owned and provided. This is not so because title to grant-acquired property vests with the grantee, not the Federal Government. The circular and common rule have been changed to make this distinction clear.

Another commenter suggested that closeout review cover all non-expendable personal property purchased with grant funds where title rests with the recipient. We do not believe such a mandatory Federal review of grant-acquired property is warranted. The common rule contains explicit instructions as to the grantee's property records and calls for the grantee to perform a physical inventory at least once every two years.

Closeout (paragraph 8a.) One agency expressed the opinion that Section 8a requiring written notification to grantees of required closeout documents may be too staff intensive. The agency recommended that published program regulations detailing this requirement should be sufficient. We agree. Since closeout reports do not generally vary significantly, a published program regulation or standard notice can satisfy the requirement.

[Circular No. A-102 (Revised)]
March 3, 1988.

To the Heads of Executive Departments and Establishments
Subject: Grants and Cooperative Agreements with State and Local Governments

1. *Purpose.* This Circular establishes consistency and uniformity among Federal agencies in the management of grants and cooperative agreements with State, local, and federally recognized

Indian tribal governments. This revision supersedes Office of Management and Budget (OMB) Circular No. A-102, dated January 1981.

2. *Authority.* This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; and Executive Order 11541. Also included in the Circular are standards to ensure consistent implementation of sections 202, 203, and 204 of the Intergovernmental Cooperation Act of 1968, the Office of Federal Procurement Policy Act Amendments of 1983, and sections 6301-08, title 31, United States Code.

3. *Background.* On March 12, 1987, the President directed all affected agencies to issue a grants management common rule to adopt government-wide terms and conditions for grants to State and local governments. This revised Circular provides guidance to Federal agencies on business-like management of grant programs and other matters not covered in the common rule. The revision replaces and rescinds Circular A-102, dated January 1981, including Attachments A-P.

4. *Coverage.* Consistent with their legal obligations, all Federal agencies administering programs that involve grants and cooperative agreements with State, local and Indian tribal governments (grantees) shall follow the policies in this Circular and issue a common grants management rule (common rule). If the enabling legislation for a specific grant program prescribes policies or requirements that differ from those in this Circular, the provisions of the enabling legislation shall govern.

5. *Deviations.* The Office of Management and Budget may grant deviations from the requirements of this Circular when permissible under existing law. However, in the interest of uniformity and consistency, deviations will be permitted only in exceptional circumstances.

6. *Pre-Award Policies.*

a. *Use of grants and cooperative agreements.* Sections 6301-08, title 31, United States Code govern the use of grants, contracts and cooperative agreements. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for

choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

b. Advance Public Notice and Priority Setting.

(1) Federal agencies shall provide the public with an advance notice in the **Federal Register**, or by other appropriate means, of intended funding priorities for discretionary assistance programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of \$25,000 shall be reviewed for consistency with agency priorities by a policy level official.

c. Standard Forms for Applying for Grants and Cooperative Agreements.

(1) Agencies shall use the following standard application forms unless they obtain OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 35) and the 5 CFR Part 1320, "Controlling Paperwork Burdens on the Public":

- SF-424 Facesheet
- SF-424a Budget Information (Non-Construction)
- SF-424b Budget Information (Construction)
- SF-424c Standard Assurances (Non-Construction)
- SF-424d Standard Assurances (Construction)

When different or additional information is needed to comply with legislative requirements or to meet specific program needs, agencies shall also obtain prior OMB approval.

(2) A preapplication shall be used for all construction, land acquisition and land development projects or programs when the need for Federal funding exceeds \$100,000, unless the Federal agency determines that a preapplication is not needed. A preapplication is used to:

- (a) Establish communication between the agency and the applicant,
- (b) Determine the applicant's eligibility,
- (c) Determine how well the project can compete with similar projects from others, and

(d) Discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.

(3) Agencies shall use the Budget Information (Construction) and Standard Assurances (Construction) when the major purpose of the project or program is construction, land acquisition or land development.

(4) Agencies may specify how and whether budgets shall be shown by functions or activities within the program or project.

(5) Agencies should generally include a request for a program narrative statement which is based on the following instructions:

(a) Objectives and need for assistance. Pinpoint any relevant physical, economic, social, financial, institutional, or other problems requiring a solution. Demonstrate the need for the assistance and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant may be used. Any relevant data based on planning studies should be included or footnoted.

(b) Results or Benefits Expected. Identify results and benefits to be derived. For example, show how the facility will be used. For land acquisition or development projects, explain how the project will benefit the public.

(c) Approach. Outline a plan of action pertaining to the scope and detail how the proposed work will be accomplished for each assistance program. Cite factors which might accelerate or decelerate the work and your reasons for taking this approach as opposed to others. Describe any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements. Provide for each assistance program quantitative projections of the accomplishments to be achieved, if possible. When accomplishments cannot be quantified, list the activities in chronological order to show the schedule of accomplishments and their target dates. Identify the kinds of data to be collected and maintained, and discuss the criteria to be used to evaluate the results and success of the project. Explain the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. List each organization, cooperator, consultant, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(d) Geographic Location. Give a precise location of the project and area to be served by the proposed project.

Maps or other graphic aids may be attached.

(e) If applicable, provide the following information: for research and demonstration assistance requests, present a biographical sketch of the program director with the following information: name, address, telephone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel engaged in the project. Describe the relationship between this project and other work planned, anticipated, or underway under Federal assistance. Explain the reason for all requests for supplemental assistance and justify the need for additional funding. Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request. If there have been significant changes in the project objectives, location, approach or time delays, explain and justify. For other requests for changes, or amendments, explain the reason for the change(s). If the scope or objectives have changed or an extension of time is necessary, explain the circumstances and justify. If the total budget has been exceeded or if the individual budget items have changes more than the prescribed limits, explain and justify the change and its effect on the project.

(6) Additional assurances shall not be added to those contained on the standard forms, unless specifically required by statute.

d. Debarment and Suspension. Federal agencies shall not award assistance to applicants that are debarred or suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. Agencies shall establish procedures for the effective use of the Consolidated List of Debarred, Suspended, Voluntarily Excluded and Ineligible Assistance Participants to assure that they do not award assistance to listed parties in violation of the Executive Order. Agencies shall also establish procedures to provide for effective use and/or dissemination of the list to assure that their grantees and subgrantees (including contractors) at any tier do not make awards in violation of implementing regulations.

e. Awards and Adjustments.

(1) Ordinarily awards shall be made at least ten days prior to the beginning of the grant period.

(2) Agencies shall notify grantees immediately of any anticipated

adjustments in the amount of an award. This notice shall be provided as early as possible in the funding period. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of an award, it shall also make an appropriate adjustment to the amount of any required matching or cost sharing.

f. Carryover Balances. Agencies shall be prepared to identify to OMB the amounts of carryover balances (e.g., the amounts of estimated, grantee unobligated balances available for carryover into subsequent grant periods). This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

g. Special Conditions or Restrictions. Agencies may impose special conditions or restrictions on awards to "high risk" applicants/grantees in accordance with § 12 of the common rule. Agencies shall document use of the "Exception" provisions of § 6 and "High-risk" provisions of § 12 of the common rule.

h. Waiver of Single State Agency Requirements.

(1) Requests to agencies from the Governors, or other duly constituted State authorities, for waiver of "single" State agency requirements in accordance with section 6504, title 31, United States Code, shall be given expeditious handling and, whenever possible, an affirmative response.

(2) When it is necessary to refuse a request for waiver of "single" State agency requirements under section 204, the Federal grantor agency shall advise the Office of Management and Budget prior to informing the State that the request cannot be granted. The agency shall indicate to OMB the reasons for the denial of the request.

(3) Legislative proposals embracing grant-in-aid programs shall avoid inclusion of proposals for "single" State agencies in the absence of compelling reasons to do otherwise. In addition, existing requirements in present grant-in-aid programs shall be reviewed and legislative proposals developed for the removal of these restrictive provisions.

i. Patent Rights. Agencies shall use the standard patent rights clause specified in "Rights to Inventions made by Nonprofit Organizations and Small Business Firms" (37 CFR Part 401), when providing support for research and development.

7. Post-award Policies.

a. Cash Management. Agency methods and procedures for transferring

funds shall minimize the time elapsing between the transfer to recipients of grants and cooperative agreements and the recipient's need for the funds.

(1) Such transfers shall be made consistent with program purpose, applicable law and Treasury regulations at 31 CFR Part 205.

(2) Where letters-of-credit are used to provide funds, they shall be in the same amount as the award.

b. Grantee Financial Management Systems. In assessing the adequacy of an applicant's financial management system, the awarding agency shall rely on readily available sources of information such as audit reports to the maximum extent possible. If additional information is necessary to assure prudent management of agency funds, it shall be obtained from the applicant or from an on-site review.

c. Financial Status Reports.

(1) Federal agencies shall require grantees to use the SF-269, Financial Status Report-Long Form, or SF-269a, Financial Status Report-Short Form, to report the status of funds for all nonconstruction projects or programs. Federal agencies need not require the Financial Status Report when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information.

(2) Federal agencies shall not require grantees to report on the status of funds by object class category or expenditure (e.g., personnel, travel, equipment).

(3) If reporting on the status of funds by programs, functions or activities within the project or program is required by statute or regulation, Federal agencies shall instruct grantees to use block 12, Remarks, on the SF-269 or a supplementary form approved by the OMB under the Paperwork Reduction Act of 1980.

(4) Federal agencies shall prescribe whether the reporting shall be on a cash or an accrual basis. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on an accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through an analysis of the documentation on hand.

d. Contracting With Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms. It is national policy to award a fair share of contracts to small and minority business firms. Grantees shall

take similar appropriate affirmative action to support of women's enterprises and are encouraged to procure goods and services from labor surplus areas.

e. Program Income.

(1) Agencies shall encourage grantees to generate program income to help defray program costs. However, Federal agencies shall not permit grantees to use grant-acquired equipment to compete unfairly with the private sector.

(2) Federal agencies shall instruct grantees to deduct program income from total program costs as specified in the common rule at § 25(g)(1), unless agency regulations or the terms of the grant award state otherwise. Authorization for recipients to follow the other alternatives in § 25(g)(2) and (3) shall be granted sparingly.

f. Site Visits and Technical Assistance. Agencies shall conduct site visits only as warranted by program or project needs. Technical assistance site visits shall be provided only (1) in response to requests from grantees, (2) based on demonstrated program need, or (3) when recipients are designated "high risk" under § 12 of the common rule.

8. After-the-grant Policies.

a. Closeout. Federal agencies shall notify grantees in writing before the end of the grant period of final reports that shall be due, the dates by which they must be received, and where they must be submitted. Copies of any required forms and instructions for their completion shall be included with this notification. The Federal actions that must precede closeout are:

- (1) Receipt of all required reports,
- (2) Disposition or recovery of federally-owned assets (as distinct from property acquired under the grant), and
- (3) Adjustment of the award amount and the amount of Federal cash paid the recipient.

(b) Annual Reconciliation of Continuing Assistance Awards. Federal agencies shall reconcile continuing awards at least annually and evaluate program performance and financial reports.

Items to be reviewed include:

- (1) A comparison of the recipient's work plan to its progress reports and project outputs,
- (2) the Financial Status Report (SF-269),
- (3) Request(s) for payment,
- (4) Compliance with any matching, level of effort or maintenance of effort requirement, and

(5) A review of federally-owned property (as distinct from property acquired under the grant).

9. *Entitlements (Reserved)*

10. *Policy Review (Sunset)*. The Circular will have a policy review three years from the date of issuance.

11. *Effective Date*. The Circular is effective on publication.

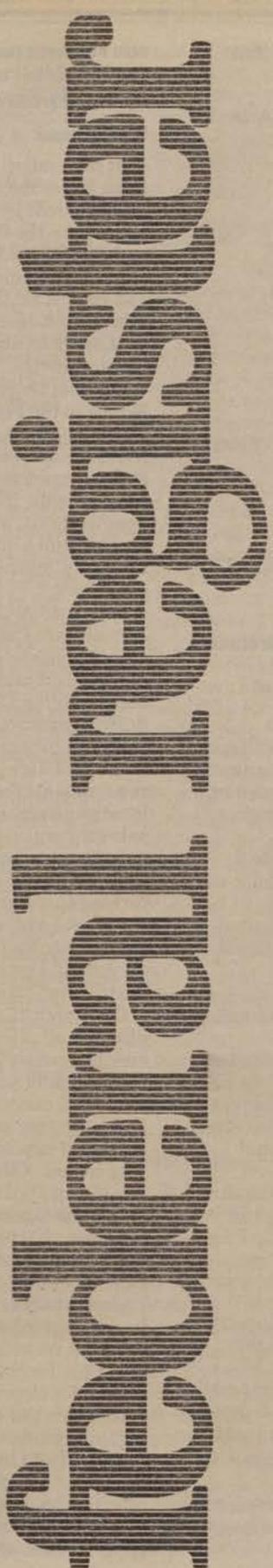
12. *Inquiries*. Further information concerning this Circular may be obtained from: Financial Management Division, New Executive Office Building, Room 10215, Office of Management and Budget, Washington, DC 20503, (202) 395-3050.

James C. Miller III,

Director.

[FR Doc. 88-5321 Filed 3-10-88; 8:45 am]

BILLING CODE 3110-01-M



Friday
March 11, 1988

Part III

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule

Department of Agriculture
Department of Energy
Small Business Administration
Department of Commerce
Department of State
Department of Housing and Urban Development
Department of Justice
Department of Labor
Federal Mediation and Conciliation Service
Department of Defense
Department of Education
National Archives and Records Administration
Veterans Administration
Environmental Protection Agency
Department of the Interior
Federal Emergency Management Agency
Department of Health and Human Services
National Foundation on the Arts and the Humanities
 National Endowment for the Arts
 National Endowment for the Humanities
 Institute of Museum Services

ACTION
Commission on the Bicentennial of the United
States Constitution
Department of Transportation

DEPARTMENT OF AGRICULTURE

7 CFR PARTS 3015 AND 3016

DEPARTMENT OF ENERGY

10 CFR PART 600

SMALL BUSINESS ADMINISTRATION

13 CFR PART 143

DEPARTMENT OF COMMERCE

15 CFR PART 24

DEPARTMENT OF STATE

22 CFR PART 135

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR PARTS 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, AND 990

DEPARTMENT OF JUSTICE

28 CFR PART 66

DEPARTMENT OF LABOR

29 CFR PART 97

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR PART 1470

DEPARTMENT OF DEFENSE

32 CFR PART 278

DEPARTMENT OF EDUCATION

34 CFR PARTS 74 AND 80

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR PART 1207

VETERANS ADMINISTRATION

38 CFR PART 43

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PARTS 30, 31, AND 33

DEPARTMENT OF THE INTERIOR

43 CFR PART 12

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 13

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PARTS 74 AND 92

NATIONAL SCIENCE FOUNDATION

45 CFR PART 602

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**National Endowment for the Arts**

45 CFR PART 1157

National Endowment for the Humanities

45 CFR PART 1174

Institute of Museum Services

45 CFR PART 1183

ACTION

45 CFR PART 1234

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR PART 2015

DEPARTMENT OF TRANSPORTATION

49 CFR PART 18

Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of Housing and Urban Development; Department of the Interior; Department of Justice; Department of Labor; Department of State; Department of Transportation; **ACTION:** Commission on the Bicentennial of the United States Constitution; Environmental Protection Agency; Federal Emergency Management Agency; Federal Mediation and Conciliation Service; Institute of Museum Services; National Archives and Records Administration; National Endowment for the Arts; National Endowment for the Humanities; National Science Foundation; Small Business Administration; Veterans Administration.

ACTION: Final rule.

SUMMARY: This action finalizes a common rule establishing consistency and uniformity among the Federal agencies shown above in the administration of grants and cooperative agreements to State, local and federally recognized Indian tribal governments.

EFFECTIVE DATE: This rule is effective October 1, 1988, except for the Department of Transportation. See the Department of Transportation agency specific preamble below.

FOR FURTHER INFORMATION CONTACT:
See individual agencies below.**SUPPLEMENTARY INFORMATION:****Background**

In November 1983, a 20-agency task force under the President's Council on Management Improvement (PCMI), chaired by the Office of Management and Budget (OMB), was established to explore streamlining grants management and review OMB Circular A-102, "Uniform Administrative Requirements for Grants to State and Local Governments."

On June 18, 1984, OMB published a Notice in the *Federal Register* (49 FR 24958-24959) seeking comments on over 50 issues and possible options for each. Federal agencies, States, local governments, interest groups, business organizations, and nonprofit organizations, as well as members of Congress, submitted several hundred comments.

Five agency-chaired teams studied the comments, existing Federal agency grants administration regulations, and noncodified manuals and handbooks implementing OMB Circular A-102 to draft a government-wide "common" rule. The proposed common rule contained fiscal and administrative requirements for grants to State and local governments (grantees) and subrecipients which are State and local governments (subgrantees). At the same time, OMB and the agencies prepared a revised Circular A-102—directed solely to Federal agencies—containing guidance to Federal agencies on how they should manage the award and administration of Federal grants.

On March 12, 1987, the President directed all affected agencies to simultaneously propose and subsequently adopt a common rule verbatim, except where inconsistent with statutory requirements. The President explained that at the time it was issued "Circular A-102 was a significant step toward simplification of grants management." He went on to say, however, that "after 16 years, some of the provisions are out of date, there are gaps where the standards do not cover important areas, and agencies have interpreted the circular in numerous different ways in their regulations. It is now time for the circular to be revised to reflect developments consistent with our Federalism policies and State and local regulatory relief objectives and the President's Management Improvement Program." The President directed the affected agencies to propose a common rule within 90 days and adopt a final common rule within one year. To meet

this schedule, 23 agencies proposed a governmentwide "common rule" in the June 9, 1987 *Federal Register* (52 FR 21820-21862). In the same issue, OMB proposed a revised Circular A-102 (52 FR 21816-21818).

The final common rule will be codified in each agency's portion of the Code of Federal Regulations, as indicated in the information provided for individual agencies below. Several agencies' rules reflect differences required in statute (e.g., the five-year record retention requirement for the Department of Education programs under the General Education Provisions Act (GEPA)). Such differences are indicated in the text.

All grants administration provisions in program regulations which are inconsistent with the common rule are rescinded, except to the extent they are required by legislation or approved as a deviation by OMB. Each agency will specify in the agency-specific preamble and amendments additional to the common rule those agency regulations that are rescinded. Likewise, all grants administration provisions of noncodified program manuals, handbooks, and other materials which are inconsistent with the rule are superseded, except to the extent they are required by legislation or approved by OMB.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year. As noted in the agency-specific preambles, some Federal agencies may authorize earlier effective dates. For example, some Federal agencies may allow grantees to use the new definition of equipment and the increase in the threshold for small purchase procedures as of the issuance of the final rule.

Comments on the Proposed Common Rule

OMB and the Federal agencies received over 85 comments on the proposed common rule from States, local governments, counties, Indian tribes, councils of governments, interest groups, business organizations, universities and nonprofit organizations. All comments received by any agency were reproduced and exchanged among all of the agencies and used to prepare this final rule.

Commenters supported the codification of common governmentwide policies in federal agency regulations. As the General Accounting Office (GAO) explained, this approach "should go a long ways towards providing a more standardized and efficient approach to administering federal assistance" and "create a more

certain environment for State and local governments."

The proposed rule invited comments on three issues in particular: Federalism, "Flow-down," and Open-Ended Entitlements.

Federalism

As explained in E.O. 12612, Federalism, States possess unique constitutional authority, resources and competence. Under Federalism, States should be given the maximum administrative discretion possible with respect to national programs they administer. Intrusive, Federal oversight is neither necessary nor desirable. Federal agencies should refrain from establishing uniform, national standards, and, where possible, defer to the States to establish them.

Consistent with the President's Federalism Executive Order, the proposed common rule provided that in three important areas (financial management systems, § _____.20, equipment, § _____.32, and procurement, § _____.36), States will expend and account for grant funds according to their own laws and procedures. This flexibility for States in these three areas applies only to funds expended by the State itself.

Most commenters reacted favorably to granting States increased flexibility. A number of States as well as the National Association of State Budget Officers, who were commenting on behalf of the Governors and the National Governors' Association, enthusiastically endorsed these changes. The GAO as well was supportive, pointing out that "This policy would provide greater flexibility to States to standardize the management of related State and Federal programs. The policy also recognizes the improvements made by many States in recent years to upgrade their management systems and personnel."

"Flow-down"

In the past, OMB Circular A-102 required that its provisions be applied to State and local governments when they were subgrantees under Federal grants as well as when they were primary grantees. The purpose of this "flow-down" of requirements was to ensure that subgrantees had the same rights and protections as grantees. To maintain this uniformity for subgrantees, the requirements in the proposed rule applied not only to direct Federal grantees, but also when funds "flow-down" to governmental subgrantees. Grantees, in their dealings with subgrantees, were subject to the same rules as Federal awarding agencies in

dealing with them. The proposal did not address the administrative requirements applicable to nongovernmental grantees and subgrantees, because they are covered by Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." A June 24, 1987 Notice in the *Federal Register* (52 FR 23729) announced that OMB and the Department of Health and Human Services (HHS) are co-chairing a follow-on effort to similarly review and issue a common rule and revised Circular for nongovernmental grantees covered by Circular A-110. Grants to nongovernmental grantees and subgrantees will be addressed at that time. The proposed rule, however, did address which cost principles apply or "flow-down" to grantees, subgrantees, or contractors. Section _____.22, Allowable Costs, stipulated that depending on the organization, Circular A-21 (educational institutions), A-87 (governments), or A-122 (nonprofits), or 48 CFR Part 31 (for-profits) will apply.

From the outset of the review of Circular A-102, OMB and the agencies recognized the importance of the policy requiring the "flow-down" of administrative requirements to subgrantees. The June 18, 1984 *Federal Register* Notice which announced the review specifically asked for public comment on a number of issues and provided options for each. The "flow-down" issue asked: "To what extent should States or other applicants be required to apply Federal administrative requirements to subrecipients (subgrantees)?" It offered three options which included: (1) Letting States manage and condition subgrants (except for requirements which fulfill a Federal need), (2) letting all grantees (besides States) do so, and (3) maintaining the status quo. The policy issue made reference to a full discussion and illustration of the first or "Federalism" option (giving States flexibility to condition and manage subgrants) in the Department of Health and Human Services (HHS) proposed rule published in the *Federal Register*, February 24, 1984 on pages 6933-5.

There was considerable public comment on the June 1984 Notice. The several interest groups representing local governments indicated they "do not want major policy modifications to the Circular." Many local governments and nonprofits alleged that States' administration and conditioning of subgrants is uneven at best and typically heavy-handed, i.e., has more "strings." States and the National

Association of State Budget Officers (NASBO), writing in conjunction with the National Governors' Association (NGA), strongly supported the review of the Circular. NASBO further indicated a preference for continued application of the uniform administrative requirements to subgrantees. Thus, continued "flow-down" of the rules to subgrantees appeared to satisfy both the States as well as the local governments.

On March 12, 1987, the President directed all affected grant-making agencies to adopt a government-wide common rule reflecting Federalism and regulatory relief. The resulting June 9, 1987 proposed common rule maintained the "flow-down" policy. The status quo approach for subgrantees was taken in spite of Federalism and regulatory relief because of the comments made earlier by State and local governments.

A number of commenters on the June 1987 proposal were concerned about the clarity of the flow-down policy. Several recommended that rather than incorporating the policy throughout the text (e.g., by repeating the applicability to grantees and subgrantees), that the rule contain a separate section entitled "Subgranting" or "Subgrants" to explain "flow-down" and distinguish such funding from contracting in § _____.36, Procurement.

A greater number of commenters addressed the substance of the "flow-down" policy. States in particular pointed out that the proposal constituted undue regulation of State administration of Federal funds and is inconsistent with Federalism. NASBO and several Governors said that the flexibility in the June 1987 proposal was not enough—that States should be able to condition and manage subgrants according to State law and procedures without any required "flow-down" of the Federal administrative standards.

On the other hand, a number of subgrantees wrote urging maintenance of "flow-down" to ensure that the rules they follow under State subgrants would be the same as those for direct Federal grants. One regional grantee argued that they have "a vital interest in simplicity and consistency in regulations governing the administration of grants which are received both directly from the Federal Government and, indirectly, as passed through various State agencies" and thus "applaud and strongly support the retention and clarification of the flow-down policy requiring grantees to follow A-102 with subrecipients."

In reconsidering this important matter, it is our view that most restrictions and requirements on States in administering subgrants are no longer necessary. As explained in E.O. 12612, Federalism,

States have unique Constitutional authority, resources, and competence. "Flow-down" provisions cannot be reconciled with the goal of this common rule to place maximum reliance on a State's own management systems, including a State's system for administering grants from its non-Federal funds. In response to clear and strong recommendations from NASBO, the NGA and Governors themselves, the rule is modified to permit States to more freely manage subgrants. A new § _____.37, Subgrants, has been added to clarify the policy, distinguish subgrants from the award and administration of procurement contracts, and, with regard to States, to rely on a State's own laws and procedures.

This will mean that local governments and Indian tribal governments will administer *direct* Federal grants according to the standards in the common rule and Federal "pass-through" funds *subgranted* from the State according to State laws and procedures. This change represents a shift in the basis upon which uniformity is established. When Circular A-102 was first issued in 1971, uniformity for local governments was based on Federal standards. This made sense because at that time there were many more Federal programs directly funding local governments and State aid to local governments was proportionally lower. Now, according to the Bureau of the Census, this is no longer the case. Local governments receive 5 times as much aid from States as they do from the Federal Government. Further, due to the ten block grants authorized in 1981 and 1982, States occupy a much more pivotal position in the administration of the remaining Federal grant programs. The common rule shifts the basis for uniformity to one which recognizes States' increased role in financing and administering intergovernmental programs.

Open-Ended Entitlements

The regulatory requirements in the June 9, 1987 proposal did not apply to open-ended entitlement grants. These are the grants for public assistance programs, such as Medicaid and Aid to Families with Dependent Children, the child nutrition programs and the administrative costs of the Food Stamps program, for which the Federal Government pays a statutorily-required share of costs without dollar limit. Because of this open-ended feature and because of special statutory requirements, these grants are administered differently from other grants in important aspects. Subpart E of the proposed rule was reserved to

subsequently and separately address these programs.

Commenters agreed with the proposal to address entitlement programs separately from the closed-ended grants. The GAO, for example, explained that "Since the Federal role varies among the types of assistance programs, we agree that the accountability rules should also vary to reflect the differential Federal roles."

The Departments of Agriculture (USDA) and Health and Human Services (HHS) which administer these programs will collaborate in the drafting of the common Subpart E for these programs.

Other Public Comments

Subpart A—General

Section _____.3 Definitions.

"Subgrant"—There were four comments regarding the definitions of subgrants and contracts between governmental entities. The primary comments came from local governments that were concerned that States would bypass the flow-down requirements of § _____.4(a) by using a procurement contract to pass Federal assistance funds to substate units of government. The definition of subgrant is worded to include contracts used to provide financial assistance to an eligible subgrantee; however, a section on subgrants, § _____.37, has been added to help clarify when requirements flow through to subgrantees.

"Share"—There was one comment concerning the definition of the term "share." The commenter was concerned that this definition excluded donated equipment and supplies for subrecipients. This definition is used for determining the proportionate share when disposing of property, equipment or supplies acquired with Federal grant funds and has no effect on the eligibility of in-kind contributions.

Section _____.4 Applicability.

Two commenters recommended that the coverage of the common rule be extended to block grant programs to obtain uniformity. The commenters said that, although block grant programs had been exempt from the requirements of Office of the Management and Budget (OMB) Circular A-102, many States used the procedures of OMB Circular A-102. The common rule does not prohibit States from using these requirements when dealing with subgrantees; however, to subject these programs to the requirements of the common rule would be contrary to the broad discretion granted to States to run block grant programs.

Several comments were received regarding the applicability of other

Federal regulations. Section ____4 implies that Federal regulations that are inconsistent with this common rule, whether or not they had been approved by OMB or required by statute, would apply to grants and subgrants. In § ____5, regulations that are inconsistent with the common rule are superseded except those required by statute or approved by OMB as an exception. Section ____4(a) has been rewritten to match the wording of § ____5.

Section ____6 Exceptions.

Three comments were received objecting to the provisions of § ____6(c) that allows Federal agencies to authorize exceptions on a case-by-case basis or for subgrantees. The commenters believed that OMB should be the only organization allowed to grant exceptions. This provision was included to provide Federal agencies the flexibility to respond to individual situations for grantees and to provide Federal agencies the same oversight over subgrantee requirements that OMB has over requirements on grantees. There should be limited use of this provision by Federal agencies just as OMB has authorized few exceptions to the common rule. No substantive change was made to the common rule.

Subpart B—Pre-Award Requirements

Section ____10 Forms for applying for grants.

The existing application forms are a five-part package including: the SF-424 Facesheet; Part II, Project Approval Information checklist; Part III, Budget Information; Part IV, Narrative; and Part V, Assurances. Unlike 1971 when Circular A-102 was first issued, there is less duplication and overlap in Federal funding for grantees and consequently less need by grantees for uniform application forms. Further, OMB now reviews and approves all forms and application packages under the Paperwork Reduction Act of 1980. In recognition of these changes in the makeup of Federal grant and cooperative agreement programs, the types of recipients receiving funding, and the paperwork control authorities in OMB's Office of Information and Regulatory Affairs (OIRA), OMB asked for public comment on revised standard application forms in a May 29, 1987 Notice in the *Federal Register* (52 FR 20178-20179). The great majority of the over 80 public comments concerned the proposed financial reporting formats for the open-ended entitlement programs, rather than either the need for, or design of, the standard application forms. We

attribute much of this lack of interest to the fact that, with the approval of OMB's Office of Information and Regulatory Affairs (OIRA), few programs use the forms displayed in Circular A-102 "as is." In fact, aside from the SF-424 Facesheet, every program extensively tailors the forms or develops its own instructions and supplemental program-specific requirements. In recognition of this, § ____10 has been revised to require use of either (1) three types of pre-approved standard forms: Facesheet, standard budget information (construction or non-construction) and standard assurances (construction and non-construction) or (2) forms approved by OMB under the Paperwork Reduction Act of 1980.

Section ____11 State Plans.

To further implement E.O. 12372, this section offered States three additional means to simplify, consolidate or substitute State plans for Federally required plans. All three commenters supported the language and intent, particularly in response to some Federal agencies which had indicated in their agency-specific preambles that this section was not applicable to their programs. Since the public comment was supportive, there was no need to make any change.

Section ____12 Special grant or subgrant conditions for "high-risk" grantees.

This section clearly identified the controls or conditions which awarding agencies may use when making grants to high risk grantees. These conditions were not mandatory, nor were they exclusive to this section. For example, some conditions such as payment on a reimbursement basis are available in other circumstances, in §§ ____21 and ____43. Further, under § ____6, agencies are permitted to depart from the common rule on a case-by-case basis or with the approval of OMB. Three commenters addressed this section: one supported the section as is; another requested more detailed due process procedures; the third wanted more clearly described controls over Federal agency use of the conditions. No change is made to this section, but the revised OMB Circular A-102 issued elsewhere in this issue has been changed to require Federal agencies to document the use of high risk conditions to permit oversight.

Subpart C—Post-Award Requirements

Section ____20 Standards for financial management systems.

A number of Inspectors General were concerned that in State-administered

programs the effect of § ____20 is that subgrantees and cost-type contractors are not subject to any requirements to account for funds. This is not the case. Section ____20 requires a State to follow its own laws and procedures regarding financial management systems. Section ____20 does not require States to meet specific Federal financial management standards because such requirements are an unwarranted intrusion into State affairs and could effect a State's ability to administer subgrants effectively. However, the rule has been revised to clarify that States, *as well as* their subgrantees and cost-type contractors, must have sufficient control and accounting procedures to show that Federal funds have not been used for unauthorized purposes.

One comment was received regarding the provision of § ____20(b)(7) that requires grantees to establish procedures with subgrantees to ensure timely receipt of cash management reports. The commenter wanted the rule to include a concept of "reasonableness" for grantee imposed requirements on subgrantees. One purpose of this rule is to provide uniform and "reasonable" requirements on grantees, and we do not expect grantees to impose unreasonable requirements on subgrantees based on the requirements of this common rule. However, the rule has been revised to include the reasonable concept for grantee procedures imposed on subgrantees to prepare cash management reports.

Section ____21 Payment.

In anticipation of legislation amending the Intergovernmental Cooperation Act of 1968, the proposed rule merely cross-referenced the Department of the Treasury rules governing payment. Many commenters therefore noted the absence of any provisions addressing the disposition of interest earned on advances or use of receivables from audit disallowances, credits and other adjustments. In order to address these concerns, the section has been expanded to address interest earned on advances, payments to subgrantees and contractors, and use of refunds, credits and other receivables. In addition, provisions for payments to grantees through the method of electronic transfer of funds have been added.

Section ____22 Allowable costs.

A comment was received that the complete reference to cost principles for for-profit organizations was too broad and should be 41 CFR Subpart 31.2; however, other portions of Part 31, such

as definitions and applicability, also apply to commercial organizations. Another commenter objected to the provision that allows Federal agencies to prescribe cost principles, such as railroads that use the Uniform System of Accounts established by the Interstate Commerce Commission. To require these organizations to adopt a second set of Federal cost principles would be counter productive. No changes were made to the common rule.

Section ____23 Period of availability of funds.

Several comments were received regarding the requirement in § ____23(b) for grantees to liquidate all obligations within 90 days after the end of the funding period (or as specified in program regulations). Two commenters only wanted exceptions to the 90-day period if specified in law, and one commenter recommended an extension to 9 months. The 90-day period was established as standard for programs that have a funding period, but a provision is contained in the common rule that allows Federal agencies to establish a different time limit in program regulations to provide for different program requirements. Because the common rule contains a provision that permits the flexibility needed to meet differing program needs, the common rule was not changed.

Section ____24 Matching or cost sharing.

A comment was received that indicated an inconsistency in the use of Federal cash for satisfying matching requirements in § ____24, and the definition of "cash contributions" in § ____3. The definition allows Federal funds received from other assistance agreements to be considered as a recipient's cash contribution if authorized by Federal statute. The exception in § ____24(b)(1) allows costs borne by another Federal grant if authorized by Federal statute. The term "cost borne by another Federal grant" includes grant funds used to pay the recipient's cash contribution. Therefore, no change was made to the common rule.

Two comments were received regarding the provision of § ____24(e)(2) on the valuation of building and land donated to the grantee. The common rule provides that unless approval is received from the awarding agency, no amount can be allowed for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The commenters recommended that the fair rental rate be used for such property.

The common rule values such property in the same manner as grantee-owned property is valued in OMB Circular A-87, Cost Principles for State and Local Governments, which is the government-wide directive on such matters. Consequently, no change was made to the common rule.

Section ____25 Program income.

One commenter did not believe that the definition of program income in § ____25(b) covered the proceeds derived by grantees from the products of the land, such as oil, gas, and other minerals. The definition of program income includes income "earned only as a result of the grant agreement during the grant period." This definition includes items, such as oil and gas revenues, that a grantee would earn from land acquired with Federal grant funds. Earnings on items such as oil or gas revenues are not considered or contemplated when making awards. No change was made to the common rule.

Several commenters objected to what they interpreted were the provisions of § ____25(g). They believed that this paragraph required the use of the deductive method in handling program income. The common rule encourages the use of the deductive method for using program income; however, the common rule does not require Federal agencies to use only this method. The common rule does require specific Federal action before other uses can be made of program income. No change was made to the rule.

Two commenters objected to the provision in § ____25(g) that allows Federal agencies to distinguish between the treatment of grantee and subgrantee program income. This provision is included because different functions are often performed by grantees and subgrantees. In some situations the purpose of the program may be better served if a subgrantee uses the additive method, while the grantee uses the deductive method because there is no need for the grantee to enlarge its efforts. This provision allows for such a situation. Therefore, no change was made to the common rule.

Section ____26 Non-Federal Audit.

Since all of the agencies participating in the common rule have regulations implementing the Single Audit Act of 1986, this section merely cross-referenced the Act. Nonetheless, a number of commenters asked for a fuller explanation of grantee audit responsibilities. We agree there should be a fuller explanation. The section has been expanded to address grantee audit responsibilities. However, for a

complete discussion of the Single Audit Act, audit standards, requirements, and reporting, grantees should look to the agency regulations implementing the Act and OMB Circular A-128.

Section ____30 Changes.

Three significant revisions have been made to the "Changes" provisions based on the recommendations of Federal agencies. First, the prior approval requirement for budget transfers exceeding 10 percent has been made waivable by Federal agencies. (§ ____30(c)(1)(ii)). Second, the prior approval requirement for changes in key persons has been elaborated to require approval for any change in the project director or principal investigator of a research project, unless this requirement is waived by the Federal grantor agency. In most research programs, the qualifications of this person are a major factor in the approval of the project. Consequently, this requirement is needed for almost all research grants. (§ ____30(d)(3)). Third, the prohibition on approval requirements for grant administration project revisions other than those listed in paragraph (d) has been deleted because it was found to be unnecessary. A number of other changes have been made for editorial or clarifying purposes. Several public commenters suggested allowing even more latitude, in various ways, for changes that do not require approval. Because the proposed regulation represents a significant loosening of prior approval requirements, we have decided not to go further before experience is gained on the effect of these changes.

Section ____32 Equipment.

Several comments were received related to the increase in the accountability thresholds to \$5,000. Most commenters applauded the Federal Government's move to relieve the administrative burden placed on State and local governments by current requirements. One commenter expressed concern that raising the thresholds would virtually eliminate inventory records maintained by grantees of general office furniture and equipment. The commenter went on to say, however, that without doubt all grantees would follow their own definition of equipment and continue to maintain records regardless of Federal agency guidelines. The very purpose of raising the thresholds was to alleviate the recordkeeping burden placed on State and local government's assistance recipients. Consequently, no change was made to the proposed common rule.

Two commenters expressed concern over § ____32(c)(3), which prohibits grantees or subgrantees from using equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute. The commenters believed that the provision is vague and could lead to inconsistent implementation by the various Federal agencies. One commenter also expressed concern that this provision will prohibit use of equipment acquired with a Federal grant for legitimate charitable purposes. However, several business organizations strongly endorsed the provision. They applauded the restriction, saying it would be extremely helpful in controlling abuses in use of grant-acquired equipment. No change was made to the rule.

One commenter stated that the provision of § ____32(e)(3) that allows an awarding agency to make a unilateral excess property and disposition decision, is unduly vague and may invite arbitrary implementation. This provision has been revised to state that in cases where a grantee or subgrantee fails to take appropriate disposition action, the awarding agency may direct the grantee to take appropriate excess and disposition actions.

Finally, paragraph 6(g) of Attachment N, Property Management Standards, in Circular A-102 reserves to the Federal Government the right to direct the transfer of equipment acquired with grant funds to the Federal Government or a third party. This provision was rarely, if ever, used in the case of grants to State and local governments and consequently not included in the June 9 proposal. One Federal agency expressed concern about the deletion of this provision, citing instances where a principal investigator under a research grant leaves one entity and continues the research at a successor entity. That agency believed it was in the best interest of the Government to maintain the right to direct the transfer of title to equipment in these instances. The common rule has been revised to add such a provision based on the language in the current Circular A-102.

Section ____33 Supplies.

Two commenters recommended that the provision of § ____33(b) on disposition of supplies should be deleted because grantees should not be required to calculate the cumulative Federal share of their supplies to compensate the grantor. During the development stages of the proposed regulation, this

provision was considered necessary to protect the Federal interest and requesting grantees to keep records of their supplies (which the majority do anyway) did not seem reasonable. This provision merely continues existing policy (Attachment N to OMB Circular A-102) except for raising the threshold from \$1,000 to \$5,000 to be consistent with the revised threshold established throughout the proposed common regulation.

Section ____35 Subawards to debarred and suspended parties.

One commenter opposed the Federal Government's system of nonprocurement suspension and debarment with government-wide effect. This system, which is in the final stages of development, was directed by the President in E.O. 12549. Because Federal agencies' regulations implementing the Executive Order will be issued later this year, the rule was revised to delete detailed procedural requirements.

Section ____36 Procurement.

Section ____36(b)(12). One commenter suggested that grantee protest procedures should be modified to set up a Federal agency review process to provide a forum for appeal to the grantor agency of any adverse grantee protest determination. Under § ____36(b)(12) (i) and (ii), the Federal agencies are involved in the review of protests where there have been violations of Federal law or regulations and standards of § ____36, or violations of the grantee's protest procedures. This provides Federal agencies the avenue to review and rectify adverse grantee actions. The same provisions are contained in the current procurement standards of Attachment O to A-102. Several Federal agencies have instituted review procedures of complaints against the award of contracts under grants. However, other agencies have determined a formal review process or board of appeals is unnecessary due to the low incidence of appeals. On January 23, 1985, the General Accounting Office decided to discontinue reviewing protests against grantee contracting activities largely because of the diminishing number of complaints filed by disappointed contractors over the nine years that protests were reviewed. We know of no major problems that grantees or Federal agencies are experiencing under the current procedures. Further, Federal agencies are permitted to set up a formal agency review when they deem it necessary. Therefore, we do not believe the provisions should be changed to

require Federal agencies to set up formal agency review process.

Section ____36(c)(1)(vi). Two commenters suggested a modification to the provision specifying a "brand name" product as being restrictive of competition. They believed that there are special instances, such as nonavailability of a product, quality needs or unique requirements, where only a "brand name" product should be purchased. Section ____36(c) *Competition* requires all procurement transactions to be conducted in a manner providing full and open competition. Section ____36(c)(1)(iv) identifies as being restrictive to competition the situation of specifying only a "brand name" product instead of allowing "an equal" product in the specifications. It does not prohibit the award to the "brand name" manufacturer when an award is justified on a basis such as nonavailability of a product. Therefore, to promote competition to its fullest as required by § ____36(c), the suggestion was not adopted.

Section ____36(c)(2). Several comments were made regarding the prohibition against using statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals. The provision was strongly supported by several commenters, although one commenter believed it should not be imposed without a study detailing the results of the prohibition. One commenter was concerned that the section would preempt State licensing laws. Also, one commenter had concern because in contracting for architectural and engineering (A/E) services geographic location is used as a selection criterion provided its application leaves an appropriate number of qualified firms to compete for a given project. The application of unreasonably restrictive qualifications and any percentage factors that give bidding advantages to in-State or local firms are barriers to open and free competition which are not in the public interest. Section ____36(c)(2) was included in the proposed regulation to foster competition, fairness, and economy in the award of contracts. The provision is viewed as being federally appropriate for a regulation covering a wide range of procurement actions, and consequently the prohibition was retained. However, two provisos have been added to handle the special situations that the commenters noted which make it clear that State licensing laws are not preempted and that geographic location may be used when

appropriate as a selection factor when contracting for A/E services.

Section ____36(d)(1). Procurement by small purchase procedures. Several commenters were complimentary of the increase in the dollar threshold for use of small purchase procedures from \$10,000 to \$25,000. However, there was an equal number of commenters that suggested raising the threshold even higher because of the cost of work in today's dollars. We believe that \$25,000 is the proper level of threshold at this time, and it is consistent with the policy that is followed for Government direct procurements.

Section ____36(d)(2) Procurement by sealed bids (formal advertising). Two comments were received suggesting that a statement be included emphasizing that the use of competitive sealed bidding is the preferred procurement method of construction. Federal procurement policy for direct procurement is to acquire construction using sealed bid procedures if certain conditions exist. Those conditions are essentially the same as described under § ____36(d)(2)(i) (A), (B), and (C) of the proposed rules concerning procurement by sealed bids. We believe this to be sound procurement policy when acquiring construction for direct Federal and for assistance programs. In view of this, we have adopted the suggestion by adding a provision to the subsection which expresses a preference for the sealed bid method when purchasing construction.

Section ____36(d)(3). Several comments were submitted concerning procurement by competitive proposals. A few commenters believed the proposed regulation should more clearly identify the qualifications-based selection process for the procurement of A/E services. One commenter believed that the qualifications-based selection process for A/E services should be required. The proposed regulation more clearly identifies and describes the requirements for procuring A/E services than was done under the procurement standards of Attachment O to A-102. In the proposed regulation, a separate paragraph to the provisions on competitive procurements clearly identifies at § ____36(d)(3)(v) a distinctive qualifications-based selection process that may be used for A/E services. However, this process is not mandated because to do so would override many State and local procurement rules which provide for the consideration of price in the selection of firms for certain A/E services. Consequently, no change was made to the proposed common regulation.

Section ____36(e). Contracting with small and minority firms, women's business enterprises, and labor surplus area firms. One commenter recommended that this section should be amended to include the preamble that is in Section 9 of Attachment O to A-102. The current statement is: "It is national policy to award a fair share of contracts to small and minority business firms." The commenter believed that the elimination of this statement would stop all Federal agencies from complying with Executive Order 12432, Minority Business Enterprise Development. Two commenters supported the proposed rule which requires grantees to take all necessary affirmative steps (six steps are detailed) to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible. They believe the requirements are appropriate to ensure that grantees and contractors extend best faith efforts to use these firms while still allowing the open competitive bidding system to operate. While the proposed regulation is more concise, the total requirements that were in Section 9 of Attachment O remain intact. Also, the mere elimination of the preamble in the standards on grantee procurements does not in any way reduce or change the requirements listed in the Executive Order on Minority Business Enterprise Development. Consequently, the proposed common rule was not modified.

Section ____36(f). Contract cost and price. One commenter requested that legal services be singled out as being subject only to price analysis, but not to cost analysis because legal firms do not maintain their financial systems in a manner to permit cost analysis. The cost and price provision as circulated is intended to provide general guidance, and to set forth the requirement for cost or price analysis. Under a certain type of procurement, such as legal services, where there are an adequate number of sources available and the price or unit price can be determined as being reasonable through price analysis, a cost analysis would not be required. The standard appears to adequately provide for situations where price analysis would be used and, therefore, the commenter's request was not adopted.

Section ____36(g)(3)(ii). One comment was received supporting the provision which allows grantees to self-certify their procurement systems as complying with the regulation's requirements. However, another commenter objected to the provision because it does not allow sufficient time to take corrective action when a bidder protests. In cases

of a protest, whether or not a grantee's procurement system has been self-certified should not affect the time required for any needed corrective action. A protest is lodged against a single procurement action and only one action needs to be addressed. System deficiencies do not need to be corrected to respond to a protest. Consequently, no change was made in the common rule.

Section ____36(h) Bonding requirements. One commenter requested that this section be modified to apply only to construction projects as is currently the case under the provisions of Attachment B to OMB Circular A-102. The bonding provisions are applicable to construction and the section has been modified to make this clear.

Section ____36(i). Contract provisions. One commenter recommended that Federal agencies be permitted to require standard contract clauses in grantee contracts. Two other commenters believed that standard or "model" clauses would be beneficial and should be allowed. Such clauses make it easier for grantees to manage their projects, and for contractors to understand the contractual requirements that will consistently be applied on federally assisted contracts. The proposed regulation and the current procurement standards in Attachment O require a grantee's contracts to contain certain provisions. In addition, Attachment O permits grantor agencies to require clauses approved by the Office of Federal Procurement Policy. Pursuant to the authority provided in Attachment O, Federal agencies have promulgated model clauses to be used by grantees. Clauses for changes, differing site conditions, suspension of work, termination, and remedies have been issued using the same type of language that has been recommended by the American Bar Association's Model Procurement Code and is required in direct Federal acquisition by virtue of FAR 43.205, FAR 36.502, FAR 12.505, and FAR 49.504. Under many of the Federal assistance programs the use of model clauses appears to be appropriate. Consequently, the authority that is included under current Attachment O was added to the common rule.

Section ____40 Monitoring and reporting program performance.

One commenter questioned whether the language in § ____40(a) requires the grantee to monitor its own activities as it administers the subgranting of funds or instead to monitor the activities of its subgrantees. The commenter believed there was an overlap between

§ ____40(a) and OMB Circular A-128. OMB Circular A-128, which implements the Single Audit Act of 1984, concerns auditing of State and local governments. There is no overlap between the requirements of that Circular and this § ____40, which concerns monitoring, not auditing. In response to the commenter's specific concern, the grantee is responsible for monitoring both its own activities and the activities of its subgrantees.

Another commenter recommended the regulation clarify the explicit responsibility of a grantee to monitor contract performance. The proposed common regulation only imposes minimal requirements regarding contracts entered into by grantees under § ____36. The grantee is ultimately responsible for administering the grant and for monitoring the contractor's activities to ensure compliance with applicable Federal requirements and achievement of performance goals. Because the factors involved in the monitoring will vary depending upon the nature of the work being performed under the contract, we do not believe specific detailed monitoring requirements should be imposed at the Federal level.

Section ____41 Financial reporting.

One commenter noted a conflict between the proposed common regulation at § ____41(b)(2) and the Circular at 7(b)(2), setting forth procedures for financial reporting on either a cash or accrual basis. The Circular requires Federal agencies to prescribe whether reporting shall be on a cash or accrual basis and the proposed common regulation requires grantees to report on the same accounting basis it uses in its own accounting system. In addition, several commenters objected to the option of allowing financial reporting on either a cash or accrual basis and thought a standard format should be established. The conflict noted between the proposed common regulation and the Circular has been corrected. The proposed common regulation has been changed to authorize each Federal agency to determine whether financial reporting shall be required on a cash or accrual basis. It is essential for Federal agencies to be given discretion to determine the appropriate type of information necessary to administer the programs for which they are responsible. The option of allowing financial reporting on a cash or accrual basis was determined to be the most feasible and the least burdensome to accommodate the accounting systems in place at Federal and grantee levels. The

proposed common regulation has been modified at § ____41(b)(2) to authorize Federal agencies to determine whether financial reporting shall be required on a cash or accrual basis.

One commenter requested that the language permitting OMB to authorize supplementary financial reporting forms "from time-to-time" be deleted. In the alternative, if this could not be done, the commenter requested that respondents be given an opportunity to review the forms prior to OMB approval. If after original clearance, forms could not be supplemented to meet the needs of particular Federal agencies, the basic form would have to contain all financial reporting requirements for every agency of the Federal Government. Such a requirement is not feasible given the complexities of the various programs administered by the Federal Government. Therefore, the language permitting agencies to request supplementation of forms has not been deleted. The requirements for OMB clearance of forms is contained in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. OMB implements the Act in regulations appearing at 5 CFR Part 1320. These regulations require an agency that wishes to collect information to submit a request for approval to OMB. The agency must also publish a notice in the *Federal Register* informing the public of the request. If anyone wishes to comment on agency-specific financial reporting forms prior to OMB approval, the forms clearance regulations contained in 5 CFR Part 1320 offer the appropriate vehicle.

Several commenters were very supportive of requiring, at the maximum, quarterly Financial Status Reports (SF-269). However, one commenter was concerned that quarterly financial reporting is not adequate to monitor large awards. This commenter suggested awarding agencies be given the option to require more frequent reporting for large awards. A significant emphasis of the proposed common regulation and Circular is to reduce unnecessary paperwork and reporting burdens at both the Federal Government and grantee levels. We believe that financial reporting on a quarterly basis, regardless of the size of the award, is adequate to monitor grantees. If reporting is insufficient, Federal agencies may impose additional financial reporting requirements through the "high-risk" provisions of § ____12.

A commenter believed the authority to allow awarding agencies to require financial reports more frequently or in more detail if a grantee's accounting system does not meet the standards for

financial management systems may invite arbitrary implementation and should require due process procedures. The authority to review the adequacy of the financial management system of a grantee is established in the proposed common regulation at § ____20(b)(7). The standards for financial management systems established in the proposed common regulation in § ____20(a)-(c) are such basic fiscal management principles that failure to meet these standards would have to involve egregious errors. Therefore, we do not believe this requirement to be arbitrary. In addition, a grantee has no due process rights to report information a certain number of times or a specific level of detail. This requirement, when imposed, would only require more detailed or frequent financial reporting. We believe that these requirements are essential to ensure the proper stewardship of Federal funds.

One commenter suggested that unliquidated obligations reported on an interim or final Financial Status Report (SF-269) be required to be liquidated within a reasonable time after the required 90-day reporting period. The proposed common regulation, at § ____23(b), requires that obligations incurred under an award be liquidated within 90 days after the end of the funding period, unless an extension has been granted by the awarding agency. We believe that the authorization to extend the liquidation date offers sufficient flexibility to handle any unique liquidation problems.

Another commenter suggested that the requirement to file Federal Cash Transactions Reports (SF-272) 15 days following the end of a quarter or month be increased to 30 days. The 15-day requirement is necessary for Federal Cash Transactions Reports (SF-272) in order for awarding agencies to complete cash requirement forecasts for the Treasury Department on a timely basis. Since grantees are required to establish methods and procedures for minimizing the time between transfer of funds and disbursement in accordance with Treasury regulations at 31 CFR 205, this timely reporting should not be burdensome.

A commenter believed the authority to allow awarding agencies to require reporting on the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors, when considered necessary and feasible, may invite arbitrary implementation. Another commenter was concerned because many subgrantees get funds from the State on a monthly basis and therefore, the three

days needs test would be impossible to meet, except at the very end of the month. In addition, other commenters believed a dollar threshold for requiring such reporting by subgrantees or contractors should be established. As required by Treasury regulation at 31 CFR Part 205, grantees must establish methods and procedures for payment that minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursements by grantees and subgrantees. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees. Therefore, grantees should readily have information available related to subgrantee cash advances and be prepared to report on such advances if requested. Also, payment systems that meet the requirement to minimize time elapsed between transfer of funds and subgrantee disbursements will provide funds at a rate sufficient to meet the three-days needs test. To ensure prudent management of Federal funds, awarding agencies need to know whether grantees have excess cash regardless of the amount of the award. Therefore, establishing a dollar threshold is inappropriate.

Section ____43 Enforcement.

One commenter requested clarification on whether grantees can use the enforcement process described in § ____43 to require subgrantees to resolve any audit findings, recommendations or exceptions cited in a previous year's audit. Yes, a grantee, as an awarding agency, is authorized under this section to resolve audits through the audit process.

Section ____44 Termination for convenience.

One commenter was concerned that termination for convenience may only be carried out with the consent of the grantee and that the awarding agency may wish to terminate an award unilaterally without involving remedies for noncompliance. The commenter misunderstands the nature of a termination action. A termination involves a Federal grantor agency terminating a grantee's authority to obligate funds before the authority would otherwise expire. Incidental to that function, a grantee may be required, as the result of an audit, to return funds that were improperly expended. A grantee has a constitutionally protected property right to obligate funds until the end of its normal grant period. Therefore, a grantor agency, before it may cut short that period of obligation

through a termination action, must either offer the grantee due process of law or obtain the grantee's consent to the termination. As a result, it is impossible to terminate a grant unilaterally even though a Federal agency may be willing to forego recovery of improperly expended funds.

Subpart D—After-the-Grant Requirements

Four comments were received on After-the-Grant requirements. Two State agencies commented that the 90-day timeframe in § ____50(b) for grantees to submit all reports associated with the grant was not sufficient. One of the commenters suggested that 120 days or longer would be more appropriate, since they experienced difficulty with some grants in meeting the 90-day deadline. We agree that in some rare cases, 90 days may not be sufficient time for grantees to submit all required reports, particularly when there are unliquidated obligations or delays in receiving reports from subgrantees. In recognition of this, the section has been amended to provide the opportunity for the Federal agency to grant an extension upon the request of the grantee.

One Federal agency commented that the 60-day deadline for cost adjustments in § ____50(c) was unrealistic, given large formula grants and the administrative burden of closing them out. Recognizing the problems such a short deadline will cause, the rule has been changed to a 90-day deadline. We believe all agencies should be able to make a cost adjustment based on the reports on hand within that timeframe. Section ____51, Later disallowances and Adjustments provides the opportunity to make further adjustments if Single Audit reports or other findings question costs.

Another commenter stated that use of § ____52(a)(2) authorizing withholding advance payments to a grantee to satisfy a debt owed to the Government could impede program implementation and not necessarily result in the actual collection of the amounts due. While we agree that use of this provision to satisfy delinquent debts to the Government may at times raise difficult issues, it is nevertheless necessary to insure that the Government has the tools to collect funds that are due. We are certain Federal agencies will continue, as in the past, to use good judgment in the exercise of this authority.

Subpart E—Entitlements [Reserved]

Impact Analyses

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared

for "major" rules which are defined in the Order as any rule that has an annual effect on the economy of \$100 million or more, or certain other specified effects. We intend the rule to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the rule will have an annual economic effect of \$100 million or more or the other effects listed in the order. For this reason, we have determined that this rule is not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities. We certify that this rule will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

Sections ____10(c); ____20(b)(2); ____24(b)(6); ____30 (f)(1) and (f)(3); ____32 (d)(1) and (f)(2); ____36 (b)(9), (c)(3), and (i); ____40 (b)(2), (c) and (d); ____41 (b), (c), (d) and (e); ____42(b); and, ____50(b) of this rule contain collection-of-information requirements. As required by the Paperwork Reduction Act of 1980, each agency will submit a copy of this rule to the Office of Management and Budget (OIRA) for its review of these reporting and recordkeeping requirements. No recipient may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number.

BILLING CODES 3410-KS-M, 6450-01-M, 8025-01-M, 3510-FE-M, 4710-24-M, 4210-32-M, 4410-18-M, 4510-23-M, 6732-01-M, 3810-01-M, 4000-01-M, 7515-01-M, 8320-01-M, 6560-50-M, 4310-RF-M, 6718-21-M, 4150-04-M, 7555-01-M, 7537-01-M, 7536-01-M, 7036-01-M, 6050-28-M, 6340-01-M, 4910-62-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 3015 and 3016

FOR FURTHER INFORMATION CONTACT:
Gerald Miske (Branch Chief), (202)382-1553.

ADDITIONAL SUPPLEMENTARY

INFORMATION: USDA has Uniform Federal Assistance Regulations found at 7 CFR Part 3015 which establish Departmentwide policies and standards for the administration of grants and cooperative agreements. The rules primarily implement OMB Circular A-102, "Uniform Requirements for Grants to State and Local Governments," Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Circular A-128, "Audits for State and Local Governments," and Executive Order 12372, "Intergovernmental Review of Federal Programs." Part 3015 also sets forth the Department's policy on competition in awarding discretionary grants and cooperative agreements and identifies the cost principles specified in Circular A-21 for universities, A-87 for State and local governments, A-122 for nonprofit organizations, and 41 CFR 1-15.2 for for-profit organizations.

Presidential Memorandum, "Uniform Requirements for Grants to State and Local Governments," dated March 12, 1987, directed that Executive departments and agencies simultaneously propose common regulations that adopt the Governmentwide terms and conditions of the proposed revisions to Circular A-102 verbatim.

The Circular A-102 common rule, Subparts A-D, does not apply to open-ended entitlement programs. Coverage for those programs will be provided in a future Subpart E. Pending the issuance of Subpart E, open-ended entitlements remain subject to the requirements of Part 3015.

USDA is adopting the A-102 common regulation by adding a new Part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." Part 3016 applies only to assistance relationships documented by grants and cooperative agreements, and subawards to State and local governments. Thus, this part does not apply to transactions entered into under sections 1472(b), 1473A, and 1473C of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended by the Food Security Act (7 U.S.C. 3318, 3319a and 3319c). Part 3016 also does not apply to the following open-ended entitlement grant programs administered by the Food and Nutrition Service:

- (a) State Administrative Matching Grants for Food Stamp Program.
- (b) National School Lunch Program.
- (c) School Breakfast Program.
- (d) Summer Food Service Program.
- (e) Child Care Food Program.

(f) Special Milk Program for Children. Part 3015 no longer governs assistance relationships with State and local governments, except as provided below. However, the above listed open-ended entitlement grant programs, as well as grants and cooperative agreements documenting assistance transactions with institutions of higher education, hospitals, other nonprofit organizations, and for-profit organizations continue to be subject to Part 3015.

The following subparts of Part 3015 remain in effect for State and local governments that receive assistance from USDA.

- (a) Subpart I on audits of State, local, and Indian Tribal governments.
- (b) Subpart Q, § 3015.158 on competition.
- (c) Subpart T on cost principles.
- (d) Subpart V on the intergovernmental review of Federal programs.
- (e) Subpart W on nonprocurement debarment and suspension (to be issued at a later date).

Comments

In the June 9, 1987 Federal Register (FR) (52 FR 21822-21824), USDA requested comments on the proposal to amend 7 CFR 3015.1 and 3015.2 in order to redefine the recipients to which this rule applies. Since no comments were received on this and the policy in Part 3015 is not being revised for those recipients which it still covers, §§ 3015.1 and 3015.2 are amended as proposed.

The Department received no agency specific comments from the public on 7 CFR Part 3016. However, an internal comment was made concerning a statutory deviation.

The comment was that section 17(f)(4) of the Child Nutrition Act (CNA) of 1966, as amended, specifically requires State submission of monthly financial reports and participation data for the Food and Nutrition Service's (FNS) Women, Infants and Children (WIC) Program. Additionally, paragraph 17(i) of the authorizing legislation requires FNS to reallocate funds periodically if it is determined that a State agency is unable to spend its allocation. In order to fulfill this obligation, FNS must consistently make funding determinations that involve the continuous forecasting and reevaluation of State agencies' funding needs which necessitates compliance with the legislatively mandated monthly financial reporting requirement. Sections 3016.40 and 3016.41 of the common rule limit grantor agencies to quarterly requirements for submission of financial and program performance reports by grantees. Since monthly reporting is a statutory requirement for the WIC

program, FNS must ask WIC grantees for financial and program performance reports on a monthly basis.

List of Subjects**7 CFR Part 3015**

Grant programs (Agriculture), Intergovernmental relations.

7 CFR Part 3016

Grant programs (Agriculture).
Issued at Washington, DC.

Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below.

John J. Franke, Jr.,

Assistant Secretary for Administration.

Approved: February 19, 1988.

Richard E. Lyng,

Secretary of Agriculture.

PART 3015—[AMENDED]

1. USDA is amending Subpart A of 7 CFR Part 3015 as follows:

a. The authority citation for Part 3015 continues to read as follows:

Authority: 5 U.S.C. 301.

Subpart A—General

b. Section 3015.1(a) is revised to read as follows:

§ 3015.1 Purpose and scope of this part.

(a) (1) This part establishes USDA-wide uniform requirements for the administration of grants and cooperative agreements and sets forth the principles for determining costs applicable to activities assisted by such USDA awards. This part contains rules that apply to USDA grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations, as well as those that apply to open-ended entitlement grants, and specifies the set of principles for determining allowable costs under USDA grants and cooperative agreements to State and local governments, universities, non-profit and for-profit organizations as set forth in OMB Circulars A-87, A-21, A-122, and 41 CFR 1-15.2, respectively.

(2) Additionally, this part establishes uniform audit requirements for State, local, and Indian Tribal governments pursuant to the Single Audit Act of 1984 and OMB Circular A-128, intergovernmental review provisions required by Executive Order 12372 for any programs listed in the Federal Register as covered, and policy on competition in awarding discretionary grants and cooperative agreements.

(3) Rules for nonentitlement grants and cooperative agreements to State and local governments are found in Part 3016.

c. Section 3015.2(d) introductory text is republished and paragraph (d)(5) is added to read as follows:

§ 3015.2 Applicability.

(d) Recipients to which this part does not automatically apply. This part does not automatically apply to the kinds of recipients listed below unless other conditions set forth in the grant, cooperative agreement, subgrant, or specific subpart in this part make all or specified portions apply:

(5) State and local governments, except open-ended entitlements to State and local governments.

2. Title 7 of the Code of Federal Regulations is being amended by adding Part 3016 as set forth at the end of this document.

PART 3016—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 3016.1 Purpose and scope of this part.
 - 3016.2 Scope of subpart.
 - 3016.3 Definitions.
 - 3016.4 Applicability.
 - 3016.5 Effect on other issuances.
 - 3016.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 3016.10 Forms for applying for grants.
- 3016.11 State plans.
- 3016.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 3016.20 Standards for financial management systems.
- 3016.21 Payment.
- 3016.22 Allowable costs.
- 3016.23 Period of availability of funds.
- 3016.24 Matching and cost sharing.
- 3016.25 Program income.
- 3016.26 Non-Federal audit.

Changes, Property, and Subawards

- 3016.30 Changes.
- 3016.31 Real property.
- 3016.32 Equipment.
- 3016.33 Supplies.
- 3016.34 Copyrights.
- 3016.35 Subawards to debarred and suspended parties.
- 3016.36 Procurement.
- 3016.37 Subgrants.

Reports, Records Retention, and Enforcement

- 3016.40 Monitoring and reporting program performance.
- 3016.41 Financial reporting.
- 3016.42 Retention and access requirements for records.
- 3016.43 Enforcement.
- 3016.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 3016.50 Closeout.
- 3016.51 Later disallowances and adjustments.
- 3016.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.
BILLING CODE 3410-KS-M

DEPARTMENT OF ENERGY

10 CFR Part 600

FOR FURTHER INFORMATION CONTACT: Cherlyn Seckinger, Business and Financial Policy, Division (MA-422), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 586-9737.

ADDITIONAL SUPPLEMENTARY INFORMATION:

I. Introduction

The proposed common rule was published in the *Federal Register* (52 FR 21820-21862) on June 9, 1987. In the DOE preamble to the proposed rule, we stated that amendments conforming Subparts A, B, and C of 10 CFR Part 600 to Subpart E would be issued with the final rule.

Since that time, DOE has promulgated a comprehensive revision of Subpart C, Cooperative Agreements (52 FR 5260, February 22, 1988). Among other things, this revision made, with a few exceptions, the administrative requirements for grants applicable to cooperative agreements in § 600.205. The common rule (Subpart E) similarly makes the administrative requirements for grants applicable to cooperative agreements except that it covers only State, local, and Indian tribal governments.

Subpart E is more limited in scope than the existing Subparts A, B, and C because it covers primarily external (applicant/recipient) requirements rather than both internal (Federal agency) and external requirements.

In order to integrate Subpart E into Part 600 and, consistent with the recent changes DOE has made to Subpart C, we believe it is necessary to restructure Part 600, to the extent possible, into Subparts which (1) group requirements according to recipient type (governmental vs non-governmental), (2)

segregate internal from external requirements and (3) consolidate the common administrative requirements applicable to both grants and cooperative agreements. This restructuring does not change any of the existing requirements, it merely conforms the provisions of Part 600 as necessary to accommodate Subpart E and reorganizes the rule into a more comprehensible format.

Consequently, Part 600 is amended into the following Subparts: Subpart A—General, Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements to Other than State and Local Governments, Subpart C—Cooperative Agreements, Subpart D—Audits of State and Local Governments, and Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Regulation).

While Subparts A and C focus primarily on DOE policy and *internal* procedural requirements which we believe applicants/recipients also need to know, Subparts B and E establish the *external* requirements or general terms and conditions applicable to recipients. Subpart B applies to non-governmental entities; Subpart E applies to State and local governments. Subpart D contains the Audit requirements for State and local governments. To effect this realignment in Part 600, certain sections which are discussed below, are being relocated.

In addition to these structural and conforming changes within Subparts A, B, and C, Subpart E is being changed in a few sections also described below to establish DOE policy in areas not covered by the common rule (e.g. cost principles for hospitals) and for purposes of clarification.

Please note in the Table of Contents of Subpart E, we have inserted in parenthesis the section numbers as they appear in the common rule following the Subpart E section numbers to show the relationship between the two.

II. Amendments to Subparts A, B, and C

Sections 600.3, 600.4, 600.10, 600.14, 600.19, 600.20, 600.25, 600.26 of Subpart A are amended to remove the obsolete cross-references to OMB Circular A-102, to provide the appropriate cross-references to Subpart E and to change references resulting from restructuring Part 600.

The scope and applicability of Subpart B as stated in § 600.100 is being amended. The amended Subpart B provides the common administrative requirements for grants and cooperative

agreements for recipients who are *not* State, local, and Indian tribal governments. The term "grant" as used in Subpart B is redefined in § 600.101 to also include "cooperative agreement". The amended scope and applicability of Subpart B parallels that of Subpart E which establishes the common administrative requirements for grants and cooperative agreements to State and local governments.

Sections 600.102, 600.103, 600.109, and 600.112 are amended to change references due to restructuring.

Sections 600.104, 600.106, 600.108, 600.121 (a) and (c), and 600.122 of Subpart B are transferred to Subpart A because they primarily cover DOE policy and internal procedural requirements applicable to both grants and cooperative agreements rather than external requirements for recipients. Section 600.118 which establishes DOE patents, data, and copyrights policy and procedures is also moved to Subpart A. Paragraphs (a) and (c) of § 600.121 are reiterated in a new § 600.28 to continue the applicability of these procedures when DOE takes enforcement actions against recipients regardless of the type of recipient involved.

Sections 600.105, 600.107, 600.110, 600.111, 600.116, 600.117, and 600.119 of Subpart B are amended to remove the references to OMB Circular A-102 and to State, local, and Indian Tribal Governments.

Section 600.200 of Subpart C is amended to revise the scope and applicability of this subpart to cover DOE policies and procedures specific to cooperative agreements, but not the general administrative requirements for recipients which, as a result of this rulemaking, are covered in Subparts B and E.

Sections 600.203, 600.204, 600.205, 600.206 are amended to provide the appropriate cross-references to Subpart E.

III. Requirements for State and Local Governments—Subpart E

Section 600.403 of Subpart E of the common rule is amended to define "prior approval" as documentation signed by a *Contracting Officer*. We believe this information is necessary to let the recipient know the DOE official authorized to approve such requests.

Section 600.406 of the common rule is amended to include a cross-reference to the DOE process for obtaining a deviation to Part 600. Because this process is applicable to applicants and recipients as well as DOE staff, the common rule will provide this cross-reference to Subpart A.

Section 600.422 of the common rule is amended to include the cost principles to be used for hospitals (45 CFR Part 74, Appendix E) and to specify the cost principles applicable to commercial organizations receiving DOE financial assistance (48 CFR 31.2 as modified by 48 CFR 931.2).

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Applications, Audit, Cooperative agreements/energy, Copyrights, Educational institutions, Eligibility, Energy financial assistance, For-profit organizations, Grants, Hospitals, Indian tribes, Individuals, Inventions and patents, Local governments, Management standards, Nonprofit organizations, Patents, Reporting and recordkeeping requirements, Solicitations, Small businesses, States, Technical data, Uniform administrative requirements.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is amended as set forth below.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

PART 600—FINANCIAL ASSISTANCE RULES

1. The Authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256; Pub. L. 97-258, 98 Stat. 1003-1005 (31 U.S.C. 6301-6306).

2. Part 600 is amended by adding Subpart E to read as set forth at the end of this document:

Subpart E—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

- 600.400 (—1) Purpose and scope of this subpart.
- 600.401 (—2) Scope of §§ 600.400 through 600.405.
- 600.402 (—3) Definitions.
- 600.403 (—4) Applicability.
- 600.404 (—5) Effect on other issuances.
- 600.405 (—6) Additions and Exceptions.

Pre-Award Requirements

- 600.410 (—10) Forms for applying for grants.
- 600.411 (—11) State plans.
- 600.412 (—12) Special grant or subgrant conditions for "high risk" recipients.

Post-Award Requirements

Financial Administration

- 600.420 (—20) Standards for financial management systems.
- 600.421 (—21) Payment.

- 600.422 (—22) Allowable costs.
- 600.423 (—23) Period of availability of funds.
- 600.424 (—24) Matching or Cost sharing.
- 600.425 (—25) Program income.
- 600.426 (—26) Non-Federal audit.

Changes, Property, and Subawards

- 600.430 (—30) Changes.
- 600.431 (—31) Real property.
- 600.432 (—32) Equipment.
- 600.433 (—33) Supplies.
- 600.434 (—34) Copyrights.
- 600.435 (—35) Subawards to debarred and suspended parties.
- 600.436 (—36) Procurement.
- 600.437 (—37) Subgrants.

Reports, Records Retention, and Enforcement

- 600.440 (—40) Monitoring and reporting program performance.
- 600.441 (—41) Financial reporting.
- 600.442 (—42) Retention and access requirements for records.
- 600.443 (—43) Enforcement.
- 600.444 (—44) Termination for convenience.

After-the-Grant Requirements

- 600.450 (—50) Closeout.
- 600.451 (—51) Later disallowances and adjustments.
- 600.452 (—52) Collection of amounts due.

Entitlements [Reserved]

3. Part 600 is further amended as set forth below:

§ 600.3 [Amended]

a. Section 600.3 is amended by changing the reference in the definition for "non-profit organization" and "Small business" from "600.118(b)(1)" to "600.33(b)(1)".

§ 600.4 [Amended]

b. Section 600.4 is amended as follows:

(1) In paragraph (a), after "§ 600.105" add "and § 600.412" and revise "§ 600.118" to read "§ 600.33".

(2) In paragraph (c)(2)(i) and (c)(3) revise "§ 600.118" to read "§ 600.33".

c. Section 600.10 is amended by revising paragraph (a) to read as follows:

§ 600.10 Form and content of applications.

(a) Forms. Application or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this part, in a program rule, or in the applicable solicitation and must include all required information. For State governments, local governments, or Indian tribal governments, applications shall be made on the forms prescribed in § 600.410. Such applicant shall not be required to submit more than the original and the two copies of the application or preapplication.

(Approved by OMB under OMB control number 1910-0400.)

d. Section 600.14 is amended by revising paragraph (c)(1) to read as follows:

§ 600.14 Unsolicited applications.

(c) * * *

(1) Unsolicited applications shall be in the format set forth in "The Guide for Submission of Unsolicited Proposals," except that a State government, local government, or Indian tribal government shall use one of the applications forms prescribed in § 600.410, as appropriate.

§ 600.19 [Amended]

e. Section 600.19(d) is amended by revising the reference "§ 600.106" to read "§ 600.31".

§ 600.20 [Amended]

f. Section 600.20(c) is amended by revising "§ 600.103(g) or § 600.108 of this part" to read "§ 600.103(g), § 600.108 or § 600.422(b)".

g. Section 600.25 is amended by revising paragraph (d) to read as follows:

§ 600.25 Access to records.

(d) *Duration of access right.* The right of access may be exercised for as long as the applicable records are retained by the recipient, subrecipient, contractor, or subcontractor. (See § 600.124 and § 600.442 for record retention requirements for grants and cooperative agreements based on recipient type.)

h. Section 600.26 is amended by revising paragraphs (d)(1) introductory text, (d)(1) (i), (ii), (iii), (iv), and (v) to read as follows:

§ 600.26 Disputes and appeals.

(d) *Review on appeal.* (1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (d)(2)(ii) of this section), including use of any special restrictive condition pursuant to § 600.105 or § 600.412;

(ii) DOE denial of a request for a deviation under § 600.4 or § 600.406 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under §§ 600.103, 600.114, 600.422, or 600.430 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under §§ 600.121(b) (1), (2), (3) or (5); or

§ 600.443 (a)(1), (a)(3) for suspensions only; or § 600.443(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under §§ 600.112(g), 600.119, or 600.436 of this part or under another term or condition of the award;

i. Section 600.28 is added to Subpart A to read as follows:

§ 600.28 Noncompliance.

(a) Except for noncompliance determinations under 10 CFR Part 1040, whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth

(1) The factual and legal bases for the determination of noncompliance;

(2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.

(3) Which of the actions authorized under § 600.121(b) or § 600.443(a) of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.

(b) DOE may take any of the actions set forth in § 600.121(b) or § 600.443(a) of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:

(1) There is evidence the award was obtained by fraud;

(2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award;

(3) There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action; or

(4) An immediate debarment in accordance with § 600.27(g) is warranted.

j. In § 600.100, paragraph (a) is revised and paragraph (b) is amended by revising "§ 600.122" to read "§ 600.29".

§ 600.100 Scope and applicability.

(a) This subpart establishes administrative rules for grants and

cooperative agreements and subawards to other than State, local, and Indian tribal governments. This subpart implements OMB Circular A-110 and the Federal cost principles. Administrative rules for grants and cooperative agreements and subawards to State, local and Indian tribal governments are prescribed in Subpart E.

k. Section 600.101 is amended by adding the term "grant" to read as follows:

§ 600.101 Definitions.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money or property in lieu of money, by the Federal Government to an eligible recipient.

§ 600.102 [Amended]

l. Section 600.102 is amended by changing the reference in paragraph (c) from "§ 600.106" to "§ 600.31".

§ 600.103 [Amended]

m. Section 600.103 is amended by changing the reference in paragraph (g) from "§ 600.108" to "§ 600.32".

§ 600.104 [Redesignated as § 600.30]

n. Section 600.104 of Subpart B is redesignated as § 600.30 in Subpart A. In the newly redesignated § 600.30, "grant", "grantee", and "subgrant" are revised to read "award", "awardee", and "subaward" respectively wherever they appear.

§ 600.105 [Amended]

o. Section 600.105(b)(3) is amended by removing "A-102 or".

§ 600.106 [Redesignated as § 600.31]

p. Section 600.106 is redesignated as § 600.31 in Subpart A. In newly redesignated § 600.31 "grant" and "grantee" are revised to read "award" and "awardee" respectively wherever they appear. Also, the reference to "§ 600.108(c)" in paragraph (b)(3) is revised to read "§ 600.32(c)".

q. Section 600.107 is amended by revising paragraph (e) to read as follows:

§ 600.107 Cost sharing.

(e) Valuation of in-kind contributions. Any grantee or subgrantee shall determine the value of services or property donated by non-Federal third parties in accordance with OMB Circular A-110, Attachment E, Paragraph 5.

§ 600.108 [Redesignated as § 600.32]

r. Section 600.108 is redesignated as § 600.32 in Subpart A. In newly redesignated § 600.32, "grant", "grants", "grantee", and "subgrantee" are revised to read "award", "awards", "awardee", and "subawardee", respectively wherever they appear. Also, the reference to "§ 600.108(c)(2)" in paragraph (d) is revised to read "paragraph (c)(2) of this section".

§ 600.109 [Amended]

s. Section 600.109 is amended by changing the reference in paragraph (d) from "§ 600.104" to "§ 600.30".

§ 600.110 [Amended]

t. Section 600.110 is amended by revising "Attachments A of OMB Circulars A-102 and A-110," to read "Attachment A of OMB Circular A-110".

§ 600.111 [Amended]

u. Section 600.111(a)(1) is amended by revising "Attachments B of OMB Circulars A-102 and A-110" to read "Attachment B of OMB Circular A-110".

§ 600.112 [Amended]

v. Section 600.112(f)(1) is amended by revising "§ 600.122" to read "§ 600.29".

§ 600.116 [Amended]

w. Section 600.116(g) is amended by removing "in OMB Circular A-102, Attachment H and".

x. In § 600.117, paragraph (d)(1) introductory text is amended by removing "OMB Circular A-102, Attachment N, Paragraph 6.d. or" and paragraph (d)(3) is revised to read as follows:

§ 600.117 Property management.

(d) ***
(3) Grantees and subgrantees shall comply with OMB Circular A-110, Attachment N, Paragraphs 6. b, c, and d for use, disposition, and management of such equipment.

§ 600.118 [Redesignated as § 600.33]

y. Section 600.118 of Subpart B is redesignated as § 600.33 in Subpart A.

z. In § 600.119, paragraph (b) is revised, paragraph (c)(1)(ii) is removed and reserved, paragraph (c)(2)(ii) is amended by revising "OMB Circulars A-102 or A-110" to read "OMB Circular A-110", paragraph (d) is amended by revising "OMB Circulars A-102 and A-110" to read "OMB Circular A-110", to read as follows:

§ 600.119 Procurement under grants and subgrants.

(b) *Grantee and subgrantee responsibilities.* Grantees and subgrantees shall comply with the grantee and subgrantee responsibility requirements of OMB Circular A-110, Attachment O, Paragraphs 2, 3, and 4.
* * * * *

§ 600.122 [Redesignated as § 600.29]

aa. Section 600.122 of Subpart B is redesignated as § 600.29 in Subpart A. In newly redesignated § 600.29, "grant" and "grantee" are revised to read "award" and "awardee" respectively wherever they appear. Also, citations need to be added in the following places:

(a) In paragraph (a)(1) add "or § 600.28" after "§ 600.121".

(b) In paragraph (b) add "or § 600.28(b)" after § 600.121(c)" and add "or § 600.28(a)" after "§ 600.121(a)".

(c) In paragraph (d) add "or § 600.28" after "§ 600.121".

(d) In paragraph (f) add "or § 600.28" after "§ 600.121".

bb. Section 600.200 is amended by revising paragraph (a) and by revising the reference "§ 600.122" in paragraph (b) to read "§ 600.29".

§ 600.200 Scope and applicability.

(a) This subpart establishes policies and procedures for the award and administration of cooperative agreements.
* * * * *

§ 600.203 [Amended]

cc. Section 600.203 is amended by revising "and 600.205" to read ", 600.102 and 600.410" wherever it appears.

§ 600.204 [Amended]

dd. Section 600.204(b)(4) is amended by revising "§ 600.122(d)" to read "§ 600.29".

ee. Section 600.205 is revised to read as follows:

§ 600.205 Application, funding, and administrative requirements.

Unless otherwise specified in this subpart or Subpart A of this part, the application, funding, and administrative requirements for cooperative agreements are specified in Subpart B of this part for recipients who are other than State, local, or Indian tribal governments and Subpart E of this part for State, local and Indian tribal governments. Furthermore, the audit requirements set forth in Subpart D of this part shall apply to cooperative agreements with State and local governments.

§ 600.206 [Amended]

ff. The introductory paragraph and paragraph (c) in § 600.206 are amended

by adding "or § 600.424" after "§ 600.107" wherever it appears.

Subpart E—[Amended]

gg-1 In newly added Subpart E, remove the terms "Part", "part", "Subpart" and "subpart" and insert "Subpart", "subpart", "Section", "section" respectively, wherever they appear.

§ 600.401 Scope of §§ 600.400 through 600.405.

gg-2 The heading for § 600.401 is revised to read as set forth above.

hh. In § 600.402, the definition of "prior approval" amended by adding paragraph (1) to read as follows:

600.402 Definitions.

* * * * *
"Prior approval" * * * * *

(1) For the Department of Energy this must be signed by a Contracting Officer.

ii. § 600.406 of Subpart E is amended by adding paragraph (d) to read as follows:

§ 600.406 Additions and Exceptions.

(d) The DOE procedural requirements for requesting additions and exceptions are specified in § 600.4.

jj. The cost principles chart in § 600.422 of Subpart E is amended by adding a second paragraph to "For-profit organization" in the "Use in principles in-" column and by adding a new entry for "Hospitals" to read as follows:

For the cost of—	Use the principles in—
***	***
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR 931.2
Hospitals.....	45 CFR Part 74, Appendix E

BILLING CODE 6450-1-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 143

FOR FURTHER INFORMATION CONTACT: Patricia R. Forbes, (202) 653-6573.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Small Business Administration is authorized to make

grants to State and local governments only in its 7(j) program, and is authorized to enter into cooperative agreements with State and local governments only in its Small Business Development Center (SBDC) program. At present there are no outstanding 7(j) grants to State governments and only one outstanding grant to a local government, with the city of Tuskegee, Alabama.

The SBA currently has SBDC cooperative agreements with five States, Illinois, Indiana, Ohio, North Dakota and West Virginia. However, SBA may not apply this regulation to those State SBDCs at this time. The Continuing Resolution on Appropriations for Fiscal Year 1988, Pub. L. No. 100-202, which passed on December 22, 1987, prohibits SBA from using appropriated funds to publish or implement regulations with respect to the SBDC program. Consequently, during Federal Fiscal Year (FY) 1988, all States which have entered into cooperative agreements with SBA to administer an SBDC are exempted from this regulation for purposes of the SBDC cooperative agreement. Also during FY 1988, any State or local government with which SBA might enter into an SBDC cooperative agreement is exempt from this regulation for purposes of the SBDC cooperative agreement.

List of Subjects in 13 CFR Part 143

Accounting, Administrative practice and procedure, Grant programs, Business Grants Administration, Insurance, Reporting and recordkeeping requirements, Small businesses.

Title 13 of the Code of Federal Regulations is amended by adding Part 143 as set forth at the end of this document.

Date: March 3, 1988.

James Abdnor,
Administrator.

PART 143—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 143.1 Purpose and scope of this part.
- 143.2 Scope of subpart.
- 143.3 Definitions.
- 143.4 Applicability.
- 143.5 Effect on other issuances.
- 143.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 143.10 Forms for applying for grants.
- 143.11 State plans.

- 143.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 143.20 Standards for financial management systems.
- 143.21 Payment.
- 143.22 Allowable costs.
- 143.23 Period of availability of funds.
- 143.24 Matching or cost sharing.
- 143.25 Program income.
- 143.26 Non-Federal audit.

Charges, Property, and Subawards

- 143.30 Changes.
- 143.31 Real property.
- 143.32 Equipment.
- 143.33 Supplies.
- 143.34 Copyrights.
- 143.35 Subawards to debarred and suspended parties.
- 143.36 Procurement.
- 143.37 Subgrants.

Reports, Records Retention, and Enforcement

- 143.40 Monitoring and reporting program performance.
- 143.41 Financial reporting.
- 143.42 Retention and access requirements for records.
- 143.43 Enforcement.
- 143.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 143.50 Closeout.
- 143.51 Later disallowances and adjustments.
- 143.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 15 U.S.C. 634(b)(6).

BILLING CODE 8025-01-M

DEPARTMENT OF COMMERCE

15 CFR Part 24

[Docket No. 70502-8030]

FOR FURTHER INFORMATION CONTACT:
Robert M. McNamara, 202-377-5817.

ADDITIONAL SUPPLEMENTARY INFORMATION: After publication of the proposed rule in Part IV, No. 110, Vol. 52 in the Federal Register, June 9, 1987, 52 FR 21825, 21848-21862, the Department of Commerce further reviewed the effects of the rule upon program activities under existing regulations and administrative practices. The amendments below reflect the Department's determination to clarify the intended impact of Part 24 upon such current activities.

Section 24.31(b) is amended by adding paragraph (b)(1), stating that Federal awarding agencies may require the recording of notices concerning real property acquired or improved with Federal grant assistance. The added paragraph is in support of the existing

Department of Commerce practice, based upon existing regulations, of requiring the recording of notices of conditions applicable to grant acquired or improved property, for the benefit of persons who may not have actual knowledge of Federal use and disposition requirements applicable to the property.

Section 24.34 is revised by retitling and adding a paragraph to confirm that certain property assets which may be acquired with Department of Commerce grant program assistance are intended to be covered under the rule. For instance, the Economic Development Administration awards grants, under Title IX of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3241-3245), to aid in the establishment of revolving loan funds. Loan notes given by borrowers to grantees in exchange for grant funds are held by the grantees as project assets. There may be uncertainty, under the law of some jurisdictions, as to whether such notes are considered tangible or intangible property, and § 24.34 is revised to eliminate any ambiguity as to that result.

The Department of Commerce interprets § 24.6(a) as authorizing the continued application of administrative requirements under pre-existing codified regulations published in the Federal Register (e.g., the requirement, at 15 CFR 2301.28, that national Telecommunications and Information Administration grantees execute and record a priority lien document on facilities purchased with the funds under the Public Telecommunications Facilities Program of the Communications Act of 1934, as amended).

List of Subjects in 15 CFR Part 24

Accounting, Grant programs, Grant administration, Insurance Reporting and recordkeeping requirements.

Sonya G. Stewart,
Director for Finance and Federal Assistance.

1. Title 15 of the Code of Federal Regulations is amended by adding part 24 as set forth at the end of this document.

PART 24—UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 24.1 Purpose and scope of this part.
- 24.2 Scope of subpart.
- 24.3 Definitions.
- 24.4 Applicability.

Sec.

- 24.5 Effect on other issuances.
24.6 Additions and exceptions.

Subpart B—Pre-award Requirements

- 24.10 Form for applying for grants.
24.11 State plans.
24.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post Award Requirements**Financial Administration**

- 24.20 Standards for financial management systems.
24.21 Payment.
24.22 Allowable costs.
24.23 Period of availability of funds.
24.24 Matching or cost sharing.
24.25 Program income.
24.26 Non-Federal audit.

Changes, Property, and Subawards

- 24.30 Changes.
24.31 Real property.
24.32 Equipment.
24.33 Supplies.
24.34 Other property.
24.35 Subawards to debarred and suspended parties.
24.36 Procurement.
24.37 Subgrants.

Reports, Records Retention, and Enforcement

- 24.40 Monitoring and reporting program performance.
24.41 Financial reporting.
24.42 Retention and access requirements for records.
24.43 Enforcement.
24.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 24.50 Closeout.
24.51 Later disallowances and adjustments.
24.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

2. Part 24 is further amended as follows:

(a) Section 24.31(b) is amended by adding paragraph (b)(1) as follows:

§ 24.31 Real property.

* * * * *

(b) * * *

(1) The Federal awarding agency may require the placing of appropriate notices of record to advise that property has been acquired or improved with Federal financial assistance, and that use and disposition conditions apply to the property.

* * * * *

(b) Section 24.34 is revised to read as follows:

§ 24.34 Other property.

(a) *Copyrights.* The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(1) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(2) Any rights of copyright to which a grantee, subgrantee, or a contractor purchases ownership with grant support.

(b) *Intangible property.* Title to such property as loans, notes, and other debt instruments (whether considered tangible or intangible) acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively. Such property will be used for the originally authorized purpose as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests. When no longer needed for the originally authorized purpose, disposition of such property will be made as provided in § 24.32(e).

BILLING CODE 3510-FE-M

DEPARTMENT OF STATE**22 CFR Part 135**

[108.869]

FOR FURTHER INFORMATION CONTACT:

James Tyckoski, Office of the Procurement Executive, Room 227, SA-6, U.S. Department of State, Washington, DC 20520. Tel. (703) 875-7044.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department of State establishes this final rule as Part 135 of Title 22 of the Code of Federal Regulations.

The Department's notice of proposed rulemaking for this regulation (52 FR 21825, June 9, 1987) included the following statement.

The Department has one program that uses cooperative agreements, but these agreements are outside the meaning of "grants," which includes "cooperative agreements," as defined in the common rule.

The Department's Bureau for Refugee Programs may effect grants or cooperative agreements with state or local governments for the initial reception and placement of refugees under the authority of section 412(b) of the Immigration and Nationality Act, as amended (8 U.S.C. 1522(b)). Reception and placement cooperative agreements under this program are not subject to the proposed regulations because they are lump sum awards. The funds are not awarded to reimburse specific costs for which the recipient is required to account. Rather, subject to certain restrictions, the recipient has wide latitude in spending its money, provided that it provides the required services or ensures that those services are provided.

The Department did not receive any comments relative to this statement.

List of Subjects in 22 CFR Part 135

Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended by adding Part 135 as set forth at the end of this document.

John J. Conway,

Procurement Executive.

PART 135—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 135.1 Purpose and scope of this part.
135.2 Scope of subpart.
135.3 Definitions.
135.4 Applicability.
135.5 Effect on other issuances.
135.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 135.10 Forms for applying for grants.
135.11 State plans.
135.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 135.20 Standards for financial management systems.
135.21 Payment.
135.22 Allowable costs.
135.23 Period of availability of funds.
135.24 Matching or cost sharing.
135.25 Program income.
135.26 Non-Federal audit.

Changes, Property, and Subawards

- 135.30 Changes.
135.31 Real property.
135.32 Equipment.
135.33 Supplies.
135.34 Copyrights.
135.35 Subawards to debarred and suspended parties.
135.36 Procurement.
135.37 Subgrants.

Reports, Records Retention, and Enforcement

- 135.40 Monitoring and reporting program performance.
135.41 Financial reporting.
135.42 Retention and access requirements for records.
135.43 Enforcement.
135.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 135.50 Closeout.
135.51 Later disallowances and adjustments.
135.52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Authority: 22 U.S.C. 2658.

BILLING CODE 4710-24-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990

[Docket No. R-88-1338; FR-2178]

FOR FURTHER INFORMATION CONTACT:

Edward L. Girovasi, Jr., Director, Policy and Evaluation Division, Office of Procurement and Contracts, Department of Housing and Urban Development, Room 5260, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-5294. (This is not a toll-free number.)

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department has determined that the following HUD programs with codified regulations are affected by the adoption of this rule implementing OMB Circular A-102 as a new Part 85:

1. Fair Housing Assistance Program (24 CFR Part 111);
2. Rental Rehabilitation Grant Program (24 CFR Part 511);
3. Programs Authorized under Title I of the Housing and Community Development Act of 1974 and codified at 24 CFR Part 570 (Entitlement Grants, the Secretary's Fund, the HUD-Administered Small Cities Program, Urban Development Action Grants, and Loan Guarantees) but not including the State's Program;
4. Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages (24 CFR Part 571);
5. Emergency Shelter Grant Program (24 CFR Part 575);
6. Housing Development Grant Program (24 CFR Part 850);
7. Indian Housing (24 CFR Part 905);
8. Public Housing Development Program (24 CFR 941);
9. Comprehensive Improvement Assistance Program (24 CFR Part 968); and
10. Annual Contributions for Operating Subsidies for Public Housing Projects (24 CFR Part 990).

These HUD program regulations are being revised by this final rule to cross reference to the requirements for State, local, and federally recognized Indian tribal governments under OMB Circular A-102, as set out in the new Part 85. These revisions serve two purposes: First, they afford grantees a ready reference to the existence and

applicability of A-102 requirements set out in Part 85, and the relevance of those requirements to the particular grant program in which the cross reference appears. Second, where the requirements of A-102 (as set out in Part 85) are wholly or partially inapplicable, the cross reference in the program regulation specifies the effect of the new rulemaking on the existing grant program.

Note: Section 85.43, Enforcement, permits HUD to use any other remedies allowed by law and, therefore would not conflict with HUD's right, for example, to declare a substantial breach or default under an Annual Contributions Contract.

Exemptions and Substantive Revisions*Urban Homesteading Program*

The Urban Homesteading Program (24 CFR Part 590) is not subject to Part 85. The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership. HUD transfers federally owned properties without payment to local urban homesteading agencies and the local agencies administer a program to provide the properties to "homesteaders" at nominal cost. The properties passed through local agencies to homesteaders are not provided as "grants" to local government. The local government agency serves merely as the facilitator of a program aimed at benefitting qualified candidates for homeownership. A technical change is being made to Part 590 to remove an existing reference to OMB Circular A-102, even though Standard Form 424 is used in the program.

Section 8 Program

The several Section 8 housing assistance payments programs also remain outside the scope of A-102 and Part 85 and HUD will continue separately regulating financial management associated with the Section 8 program as part of 24 CFR Chapter VIII.

The Section 8 Existing, Moderate Rehabilitation, and Housing Voucher programs are exempted from Part 85. Under these programs, housing assistance payments are made to private owners for the purpose of subsidizing rental charges for lower income families occupying privately owned housing units. Public Housing Agencies administer these funds and assist lower income families in locating suitable housing under these programs, but the public agency essentially acts as a conduit for Federal financial assistance to the private owners.

Similarly, Section 8 assistance under the New Construction and Substantial

Rehabilitation Programs is made available to owners of dwelling units that have been constructed or rehabilitated for lease to lower income families. Among the owners are profit-motivated and non-profit owners, including PHAs, the majority of which are the so-called "agency or instrumentality PHA's established under State not-for-profit laws for the purpose of owning and leasing the projects to their "parent entity PHAs" for subleasing to eligible lower income families. Less than 10 percent of Section 8 New Construction and Substantial Rehabilitation projects are owned outright by housing authorities. The great majority of the projects are privately owned. The duties and responsibilities of PHA Owners receiving housing assistance payments for eligible lower income families under the Section 8 New Construction and Substantial Rehabilitation programs do not differ from those of a private owner participating in this same program. In all cases, the assistance is being provided to lower income families; the owner is merely the conduit for the Federal financial assistance.

Accordingly, these programs are not appropriate for management under the uniform requirements of Part 85, and HUD will continue its existing administrative requirements with reference to 24 CFR Parts 880 through 886 (HUD's program regulations governing the Section 8 program) and Part 887 (HUD's pending final regulations to govern the Housing Voucher program). This rule, nonetheless, makes a technical correction to Part 882 to remove reference to audit requirements under OMB Circular A-102 and to instead refer to the audit requirements of Part 44.

Grant Programs in General

Subpart B—Pre-award Requirements—does not apply to the Community Development Block Grant Entitlement program (24 CFR Part 570, Subpart D) or to the Rental Rehabilitation program (24 CFR Part 511) because § 85.10 (Forms for applying for grants) does not apply to formula grant programs, and § 85.11 (State plans) is inapplicable when the program statute does not require State plans. In this connection, § 85.10 does not apply to the Emergency Shelter Grant program (24 CFR Part 575) because it also is a formula grant program. Additional revisions to Parts 511, 570, and 575 are discussed below.

Rental Rehabilitation Program

Section 85.40(b)(1), regarding the submission of annual performance reports, does not apply to the Rental Rehabilitation Program (24 CFR Part 511). Section 17(m) of the Rental Rehabilitation Program statute (42 U.S.C. 1437c) requires that the annual report be submitted prior to the end of the fiscal year and provides for specific information to be included. The regulations at 24 CFR Part 511 already sufficiently implement Section 17(m).

Since the Rental Rehabilitation Program currently involves no property acquisition, § 85.31 (Real property) is inapplicable by its own terms. However, for clarity, we are specifying the inapplicability of § 85.31 to the Rental Rehabilitation Program.

With respect to program income under § 85.25, we have elected to draft a new § 511.76 *Program income* to provide specific regulatory direction consistent with the basic thrust of the common rule, but in the special context of the Rental Rehabilitation Program.

We note that although § 85.43 is applicable to the Rental Rehabilitation Program, the program regulation at § 511.82, which is statutorily based, would not be superseded but rather would provide "other remedies that may be legally available" as indicated in § 85.43(a)(5).

Community Development Block Grant (CDBG) Entitlement Program

Grant administration requirements for the CDBG Entitlement Program are described in 24 CFR Part 570 at Subpart J, "Grant Administration." The subpart has been substantially revised for clarity and for consistency with Parts 85. The sections in existing Subpart J set forth the requirements of the various attachments to A-102, as well as other grant administration requirements. Subpart J, as revised, generally consolidates the applicable sections of Part 85 into one section (§ 570.502), excises some of the options provided to the Federal agencies in Part 85, and sets forth CDBG statutory requirements.

The requirements of Part 85 have been made applicable, except to the extent differences are required by Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320) ("the HCD Act of '74") or have been authorized by the Office of Management and Budget (OMB). These differences are explained below, as are the reasons why certain provisions in Part 85 are not identified as been applicable to the CDBG program.

—The payment provisions in § 85.21 (Payment requirements) apply to the

program except with respect to payments made for financing property rehabilitation activities. Section 104(g) of the HCD Act of '74 permits lump sum draws from the grantee's letter of credit to finance property rehabilitation activities. Section 570.513 of Subpart J implements this statutory requirement.

—Section 104(i) of the HCD Act of '74 permits grantees to retain any program income realized from the CDBG grant, if such income is used for eligible community development activities in accordance with program requirements. Therefore, the CDBG rules on program income reflect the "Addition" alternative for the use of program income described at § 85.25(g)(2).

—Sections 105(a) (1) and (7) of the HCD Act of '74 make the provisions at § 85.25(f) and § 85.31 on disposition of real property inapplicable to the CDBG program. These sections of the HCD Act of '74 make eligible for CDBG assistance both the acquisition and disposition "through sale, lease donation or otherwise" of real property for community development. Consequently, the sale of real property is itself an authorized use of property acquired with grant funds, rather than a disposition of property no longer needed for the grant purpose. Such properties are commonly sold by the grantee for redevelopment and the sale proceeds are appropriately treated as program income subject to the statutory provisions of the program that income may be retained by the grantee, in which case it must be used in accordance with the same requirements applicable to the use of grant funds. Accordingly, proceeds from the disposition of real property are included in the examples of program income listed in the definition of that term at § 570.500(a), and the treatment of real property acquired with CDBG funds is governed by the requirements at § 570.505.

—Section 104(d) of the HCD Act of '74 requires that each grantee submit a performance and evaluation report and describes the content of the report. This report, which is submitted annually, substitutes for the performance reports described at §§ 85.40 (b), (c), (d), and (f) and 85.41 (a), (b), and (c). The contents and timing of the statutorily required report are discussed at § 570.507.

—Section 105(a)(2)(D) of the HCD Act of '74 requires grantees to provide citizens with reasonable access to records regarding the past use of

CDBG funds received by the grantee. This section provides the basis for the requirement at § 570.508 on public access to program records, and affects the implementation of § 85.42(f), "Restrictions on public access."

—Sections 104(d) and 111 of the HCD Act of '74 set forth sanction mechanisms for handling performance and compliance problems. These sections are implemented by §§ 570.910-570.913 of the CDBG regulations. It is the Department's position that the enforcement mechanisms in those regulatory sections are not superseded by the enforcement provisions in § 85.43 (Enforcement).

The applicability to the CDBG program of the various sections of Part 85 is described in § 570.502. The provisions not shown as being applicable fall into one or another of several categories:

—Four sections are inapplicable because they do not contain requirements applicable to grantees or subgrantees. These are §§ 85.1 (Purpose and scope of this part), 85.2 (Scope of subpart), 85.4 (Applicability), and 85.5 (Effect on other issuances).

—Five sections are inapplicable because, by their own terms, they do not apply to the CDBG entitlement program. Section 85.10 (Forms for applying for grants) does not apply "to formula grant programs which do not require applicants to apply for funds on a project basis." Section 85.11 (State plans) applies to programs that "require States to submit plans before receiving grants." Section 85.23 (Period of availability of funds) applies "where a funding period is specified." Section 85.24 (Matching or cost sharing) applies only where a program has matching or cost-sharing requirements. Section 85.30 (Changes under discretionary (project) awards) does not apply to formula award programs. None of the conditions which would trigger these requirements is present in the CDBG entitlement program.

—Certain provisions in Part 85 are inapplicable because they apply only to State grantees. States are not eligible applicants for CDBG Entitlement Program grants. These provisions are at §§ 85.20(a), 85.32(b), and 85.36(a).

—Certain other provisions in Part 85 are inapplicable because, as explained above, they are inconsistent with statutory requirements. These provisions are § 85.31 (Real Property)

and the performance report provisions in §§ 85.40 (b), (c), (d), and (f) and in 85.41 (a), (b), and (e).

—Two sections of Part 85 are inapplicable because their provisions are covered in sections of the CDBG rule specifically tailored to the nature of the CDBG entitlement program. Rather than cross-referencing § 85.25 (Program income) and § 85.50 (Closeouts), program income provisions are covered in §§ 570.500(a) and 570.504 and closeout provisions are covered in § 570.509. Covering program income in Subpart J allows the Department to indicate which options permitted under § 85.25 it has chosen for the CDBG program. For example, the Department has chosen to permit costs incident to the generation of income to be deducted from gross income to determine program income. (This choice is permitted under § 85.25(c).) Covering program income in Subpart J also provides a forum for stating that proceeds from the disposition of real property and equipment are treated as program income in the CDBG program (for the reasons explained elsewhere in this preamble) and for providing additional examples of the types of income received under the CDBG program that fall within the definition of program income. Similarly, covering the subject of closeouts in Subpart J allows the Department to adjust the closeout provisions in Part 85 to fit the nature of the CDBG entitlement program. For example, § 85.50(a) states, "The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed." However, this description of when closeout shall occur does not fit the entitlement program because there is no process by which "required work" is specified. Also, the closeout provisions in Part 85 do not cover two items of major importance to the CDBG program—the future use of real property acquired with grant funds and the future use of program income.

—One provision of Part 85, § 85.32(e) on disposition of equipment, is not shown as applicable based on an exception authorized by the Office of Management and Budget. This provision requires the proceeds from the sale of equipment with a fair market value in excess of \$5,000 to be returned to the awarding agency. Sales proceeds remitted to HUD by a CDBG recipient whose program is still active would be treated as a return of grant funds and made available for disbursement (e.g., under the

recipient's letter of credit). Since the amount of proceeds from the sale of equipment purchased with CDBG funds is relatively small in most cases, requiring such proceeds to be returned would be burdensome both to HUD and to the recipient. Further, the typical CDBG entitlement recipient retains its entitlement status so long as funding for the CDBG program is continued and, thus, its program remains active. Consequently, proceeds from the sale of equipment are handled as program income.

The Office of Management and Budget has also authorized the addition of two grant administration requirements for the CDBG program which are not contained in Part 85:

- Section 570.503, "Agreements with subrecipients", has been added because of the need for improved control by grantees over the thousands of subrecipients receiving CDBG funds, as evidenced by reports issued by the Department's Office of the Inspector General. This area has been identified as one of high vulnerability to fraud, waste and mismanagement.
- Section 570.509(c), "Closeout agreement", has been added to facilitate the closeout process and to cover grantee responsibilities after closeout for items such as the future use of real property and program income and continued enforcement of flood insurance coverage.

Urban Development Action Grants

Urban Development Action Grants (UDAGs) are authorized under section 119 of the Housing and Community Development Act of 1974 (42 U.S.C. 5318). Regulations governing the UDAG program are provided in 24 CFR Part 570, Subpart G, and Subparts A, C, J, K, and O except to the extent that they are modified or augmented by Subpart G. As noted above, Subpart J, "Grant Administration", is being amended to implement the requirements of Part 85. The UDAG program follows the provisions of Part 85 as set forth in Subpart J.

The reasons for nonapplicability of some provisions of Part 85 to the Community Development Block Grant program (which is the primary program to which Subpart J is geared) hold true for the nonapplicability to the UDAG program, with a few exceptions:

- Section 85.10 (Forms for applying for grants) has not been made applicable to the UDAG program. Instead, OMB has approved the requirements for application forms and instructions set forth in § 570.458. Section 85.10

specifically permits the Federal agency to prescribe application forms and instructions approved by OMB.

- Section 85.25 (Program income) has not been made applicable because the definition and use of program income is specified by the UDAG grant agreement and program regulations. The definition used for the UDAG program is tailored to the program and is consistent with the definition in § 85.25.
- Section 85.30 (Changes under discretionary (project) awards) has not been made applicable. OMB has approved the requirements for amendments set forth in the UDAG regulations at § 570.463. This regulation is tailored to the UDAG program (consistent with § 85.30) and is needed to assure that the changes to the UDAG project are not such that the project would not have been funded if the changes had been part of the original project.

The provisions of § 85.43 are applicable to the UDAG program. However, that section's applicability does not affect the program regulations at §§ 570.910-570.913, which implement statutory remedies for performance and compliance problems.

CDBG Indian Program

Section 571.502(e) is being revised to cross reference the procurement requirements of § 85.36. This provision is also being amended to provide alternative requirements in the event that compliance with the bonding requirements set forth in § 85.36(h) is infeasible or incompatible with the Indian preference requirements set forth in § 571.503. The Department has found alternative arrangements to be necessary because Indian contractors whose businesses are located on tribal land may be unable to secure performance and other bonds. These Indian contractors may be unable to satisfy the security arrangements to sureties because of the trust status of Indian land. This situation may make adequate competition impracticable and makes it difficult for grantees to comply with statutory Indian preference requirements.

Emergency Shelter Grant Program

Program requirements for the Emergency Shelter Grants (ESG) Program are described in 24 CFR Part 575 at Subpart E and grant administration requirements at Subpart F. Both Subparts have been revised to be consistent with the common regulations, as codified at 24 CFR Part 85, except to the extent differences are

authorized by statute or by the Office Management and Budget. These provisions are explained below:

- Section 85.10 (Forms for applying for grants) does not apply because the ESG program is a formula grant program.
- The payment provisions described in § 85.21 provide for working capital if: (1) The grantee or subgrantee cannot establish procedures required under the advance payment method that will minimize the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by the grantee or subgrantee and (2) the awarding agency determines that reimbursement is not feasible because the grantee or subgrantee lacks sufficient working capital. The ESG program requirements in § 575.63 allow for "a working capital advance for 30 days' cash needs or an advance of \$5,000, whichever is greater", without any such conditions. This provision was included because of the presumption that most of the shelter grant funds would be flowing through grantees to small non-profit recipients which would not be able to meet either of the above-cited conditions in § 85.21, thereby avoiding the unnecessary step of determining this to be the case in every situation. This presumption has been borne out during the first year of the program's operation.
- The matching or cost sharing provisions in § 85.24(a)(1) refer to satisfying the matching requirement through "allowance costs". The ESG statute (Pub. L. 99-500, section 101(g)), however, contains broader language:

Responsibilities of Grantees

(a) Matching Amounts.—

(1) Each grantee under this part shall be required to supplement the assistance provided under this part with an equal amount of funds from sources other than this part. Each grantee shall certify to the Secretary its compliance with this paragraph, and shall include with such certification a description of the sources and amounts of such supplemental funds.

(2) In calculating the amount of supplemental funds provided by a grantee under this part, a grantee may include the value of any donated material or building, the value of any lease on a building, any salary paid to staff to carry out the program of the grantee, and the value of the time and service contributed by volunteers to carry out the program of the grantee at a rate determined by the Secretary.

Program regulations (§ 575.51) therefore allow any funds spent as part of the grantee's homeless program, whether or not such expenditures are allowable costs under ESG, to be

counted as satisfying the matching requirements.

- The valuation of volunteer services described in § 85.24(c)(1) is set "at rates consistent with those ordinarily paid for similar work in the grantee's organization." However, the legislative history of ESG established the rate at \$5 per hour and it is this rate which is reflected in the program regulations (§ 575.51(b)).
- Requirements for the contents and the timing of the submission of performance reports described in § 85.40(b)-(d) and (f) have not been made applicable. The ESG program regulations (§ 575.65(b)(2)) specify report contents and require the submission of annual reports for the period through December 31 "no later than 30 days after December 31." Given the emergency nature of the program, the streamlined program requirements, the modest size of the grants, the intense Congressional and public interest in the way program funds are being used, and the vital role such reports will play in HUD's monitoring of grantee performance, the simplicity and brevity of the reporting format and a 30- rather than 90-day deadline seem to be not only justified but also necessary to the effective and expeditious operation of the program.

The remedies in § 85.43 have been made applicable to the ESG program. However, the remedies set forth in § 575.69 are not superseded, but are "other remedies that may be legally available" in accordance with § 85.43(a)(5).

Housing Development Grant Program

Housing Development Grants (HDG) are authorized under section 17 of the U.S. Housing Act of 1937, 42 U.S.C. 1437o ("1937 Act"). Regulations regarding the HDG program are provided at 24 CFR Part 850. Certain provisions of Part 85 are inconsistent with Federal statutory and regulatory requirements governing the HDG program. The following sections are not applicable to the HDG program for the reasons stated:

- Section 85.23 (Period of availability of funds) is not applicable because a funding period is not specified for the HDG program.
- Section 85.24 (Matching) does not apply because no matching is required for the HDG program.
- Section 85.25 (Program income) has not been made applicable to the program. Instead, HUD has exercised the options afforded to the Federal agency in § 85.25 and has tailored

program income requirements to the HDG program. These requirements (including the definition and use) are specified in the HDG regulations and grant agreement. These program requirements are based in part on section 17(d)(7) of the 1937 Act and in part on the requirement of § 85.25 to the extent not inconsistent with statutory requirements.

- Section 85.30 has not been made applicable because the requirements for amendments are set forth in the HDG regulations at § 850.31(e). HDG regulations do not permit any increase in the grant amount and require HUD prior approval of any changes in costs in excess of ten percent of those originally approved. This is in keeping with section 17(d)(5)(E) of the 1937 Act which requires that project selections be made which will bring the least cost to the Federal Government.
 - Section 85.31(c) (Real Property) covering real property disposition is not applicable. HUD retains no interest after the project term (as defined in the grant agreement) in property acquired with HDG funds, and HUD would receive no payment upon disposition. The disposition during the project term of HDG acquired property is governed by the grant agreement, consistent with the 1937 Act.
 - Sections 85.40 (b)-(d) and (f) (Monitoring and reporting program performance) covering reports, do not apply. These provisions of § 85.40 are inconsistent with HDG reporting requirements that are specified in section 17(m) of the 1937 Act and program regulation at § 850.75.
 - Section 85.50 (Closeout) has not been made applicable to the HDG program. Instead, the HDG regulation at § 850.79, which is consistent with § 85.50 and which is written to fit more closely the HDG program, sets forth the closeout requirements and procedures.
- We note that although § 85.43 (Enforcement) has been made applicable to the HDG program, the sanctions in that section are in addition to the enforcement provisions in section 17(d)(7) of the 1937 Act and in implementing regulations in §§ 850.63, 850.103, 850.105, 850.107, 850.151, and 850.155.
- In addition, the Department wishes to clarify the coverage of § 85.36 (Procurement) as it relates to the HDG program. The grantee's selection of the project owner is not subject to the requirements of § 85.36 because it is not a procurement of property or services.

The project owner is not required to follow the requirements of § 85.36 because § 85.4 indicates that Part 85 applies only to State, local, and Indian tribal governments.

Public Housing

HUD previously took the position that annual contributions for public housing development and modernization were not subject to Circular A-102 requirements because the Federal assistance to public housing agencies (PHAs) was in the form of loans and loan guarantee commitments made by HUD. The Department's current method of funding public housing development and modernization by means of capital grants (as opposed to loans, as in the past) has the effect of subjecting public housing development and modernization funding to A-102 requirements. Public housing operating subsidies are administered as grants and therefore are also appropriate for A-102 grant management treatment.

In order to avoid the problem of maintaining a separate set of procedures for those few PHAs which are state agencies, the definition of "state" in § 85.3 has been revised to except PHAs from the definition, and the definition of "local government" has been revised to include specifically any PHA—State or local—under the U.S. Housing Act of 1937. These changes are necessary so that there is a consistency of treatment for all PHAs.

The standards for financial management systems contained in § 85.20, and for monitoring and reporting in § 85.41 are currently encompassed within the requirements of the Annual Contributions Contracts (ACCs) executed between HUD and each local public agency and further defined in the *Low-Rent Accounting Handbook*, HM 7510.1, and *Audits of Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) by Independent Public Accountants (IPAs)*, 7476.1, CHG-5. These requirements are applicable to the development, operation, and modernization phases of the public housing program. Section 85.6 precludes Federal agencies from imposing additional administrative requirements except in codified regulations published in the **Federal Register**. While the principles and standards prescribed in Handbook 7510.1, which is not codified, are basically compatible with the requirements in §§ 85.20, 85.40 and 85.41, certain requirements for detailed information necessary for proper program management exceed the limited information which would be provided by completing the forms included in

Circular A-102. Departmental financial management and record requirements, however, do not exceed the statutory standard established by HUD as directed by Congress in Section 814 of the Housing Act of 1954, which required local agencies to adhere to accounting and record keeping requirements prescribed by HUD. Also, because of the financial magnitude of the development, operation, and modernization phases of the public housing program, it is necessary that the Department retain a number of provisions in addition to Part 85 and that the three phases be able to utilize and rely upon the same accounting data. HUD's financial management monitoring and reporting regulations for PHA-owned rental units are added by this rule as a new paragraph (c) to 24 CFR 990.103, and as a new Subpart B for those public housing programs other than PHA-owned.

While HUD's financial reporting requirements are compatible with those in § 85.41, the Financial Management Handbook, 7475.1, was recently revised to increase the submission time for year-end financial statements from 30 to 45 days. Section 85.41(b)(4) states that annual reports will be due 90 days after year end. However, because of § 85.41(a)(3), which directs grantees to follow all applicable Federal agency instructions approved by OMB under the Paperwork Reduction Act of 1980, we have determined that HUD is not bound by § 85.41(b)(4), and the revised handbook should be followed regarding the year-end submission time.

There is one determination regarding public housing management that we wish to emphasize. Section 85.25 (Program income) provides that program income does not include interest on grant funds and, thus, might be interpreted to mean that the Department can no longer offset interest income against subsidy amounts. However, under the public housing program management phase (including modernization), interest income is treated the same as other program income in the determination of operating subsidy eligibility. Because the calculation of operating subsidy is part of the operating budget that is set from the beginning, the public housing program management phase will not be affected by the stated provisions in § 85.25 of this rule, and 24 CFR 990.109(e)(3) is being revised by this rule to reflect this variation from A-102 requirements.

In further connection with the treatment of A-102 as it impacts on public housing development and

modernization, the Department has made another determination. In HUD's public housing development and modernization regulations (24 CFR Parts 941 and 968, respectively and including Part 905), alternative means are provided for the provision of bonding or other security for the performance of construction or equipment contractors beyond the single bonding procedure set out in § 85.36(h)(2). Section 85.36(h) (Procurement—Bonding requirements) requires a 100% performance or payment bond for contracts exceeding \$100,000. In contrast, HUD's rules (e.g., 24 CFR 968.12(c)) provide for a variety of alternatives. While 100% bonds are among these, in 24 CFR 968.12(c) HUD allows for separate performance and payment bonds, each for 50 percent or more of the contract price, or for a 20 percent cash escrow, or for a 25 percent letter of credit. These HUD rules are intended to promote greater opportunity for participation in construction and equipment contracting by small or minority or women-owned firms, and the Department's experience with these requirements has been a successful one. Accordingly, 24 CFR 968.12(c) is being revised by this rule to continue HUD's existing rules on bonding, notwithstanding the general applicability of 24 CFR Part 85 to these programs. Also, 24 CFR 905.203 (b)(c) and (d)(2) require a 100 percent performance and payment bond or other security as may be acceptable, and 24 CFR 941.102(a) requires a 100 percent performance and payment bond or other assurances approved by the field office. These sections also are being revised to continue HUD's existing rules on bonding, notwithstanding Part 85.

Currently, the Comprehensive Improvement Assistance Program (CIAP) allows PHAs to execute architect/engineer contracts, invite bids, and issue change orders (contract modifications) without prior Field Office approval where the PHA certifies in writing that all HUD requirements have been met. However, based on an assessment of PHA past performance in modernization and PHA technical capability, Field Offices may establish dollar thresholds for PHAs in these three areas, over which the PHA is required to submit documents for prior HUD review and approval. (Recognized performers, as defined under the Decontrol Handbook, are allowed to certify in all cases.) To retain this incentive for PHAs to improve their performance and to ensure that the "scope or objective of the project" is not revised without prior HUD approval (see

§ 85.30(d)), changes are being made to §§ 968.12 (d), (e), and (g).

In this connection, changes are also being made to §§ 905.211(b) and 968.12(f), and a new paragraph (g) is added to § 941.208, to preserve the authority under these programs for prior HUD approval of the grantee's decision to award a contract. Under the public housing program, the Federal involvement is a long-term financial commitment—not a single purpose activity. HUD provides funds to pay the capital costs of developing new projects and later provides additional funds for the modernization and operation of these same projects. The quality of design and construction has a direct impact on funding for modernization and operations.

Another specific area of Part 85 that requires further discussion is the treatment of "high-risk" recipients under § 85.12 (Special grant or subgrant conditions for "high-risk" grantees). Section 85.12 sets forth special grant or subgrant conditions for "high-risk" recipients. The Department wishes to stress that this section is not being interpreted by HUD as allowing the setting of special conditions *only* for high-risk recipients. Other recipients who are not high-risk may have special conditions or restrictions imposed on them by HUD in appropriate cases. In response to public concern that agency discretion to set special conditions on grants or subgrants be limited to restrictions intended by Congress, § 85.12 is governed by paragraph 6g of the revised OMB Circular A-102, which requires agencies to keep records of all situations in which the high-risk provision of § 85.12 is used.

Part 85 makes cross-references to OMB Circular A-87 at § 85.22(b) to identify applicable cost principles. However, below are listed two of the provisions of OMB Circular A-87 which we believe require specific discussion.

1. Attachment B, Part B—Allowable Costs

—Provision (11) permits PHAs to depreciate the cost of buildings and equipment. However, the Department's accounting system does not provide for depreciation of capital assets. For the most part, PHA's capital assets are funded separately from operations through development and CIAP grants. It would be inaccurate to distort the results of the operations phase of the public housing program by including depreciation expenses for assets for which there is separate funding mechanism.

2. Attachment B, Part D—Unallowable Costs

We construe this provision as not affecting the write-off of uncollected rental charges. The very purpose of the public housing programs is to provide assistance to those who cannot pay their rent. For this reason, after PHAs/IHAs have made reasonable efforts to collect unpaid rental charges from former tenants, a resolution of the Board of Commissioners is passed to write off the receivables. In order to accomplish the write-off, a charge is made against the grant, in that an expense is reflected in the PHA/IHA accounting records. In the Public Housing Program and the Indian Housing Program, rents charged to tenants are accounted as income and to the extent they are not collected, as "receivables," and are a positive amount in the PHA/IHA operating reserve. Such receivables must be "written-off" in accordance with the existing financial management system in order to avoid creating a false picture of the PHA/IHA financial situation.

Additional Technical Corrections and Accommodations

Technical corrections and accommodations are being made throughout Parts 44, 111, 570, 571, 850, 905, and 968 to cross-reference to the new Part 85 and to make necessary technical changes in compliance with the new Part 85. Technical corrections are also being made in Parts 882, 905, and 968 to cross-reference to Part 44, which treats requirements under the Single Audit Act. An exception clause is added to Part 970, Demolition and Disposition of Public Housing Projects, because that part is statutorily based and, therefore, overrides inconsistent part 85 requirements (e.g., § 85.31(c)).

Responses to HUD-Specific Public Comments

Public comments focused on HUD concerns were received from four commenters: a local housing development agency, a minority contractors' association, a community and economic development agency, and the National Association of Housing and Redevelopment Officials. Most of the comments pertained to technical understanding of the application of the rule and have been addressed in the preamble to the common rule and elsewhere in this HUD-specific preamble.

A concern was raised that grantees and subgrantees may have to comply with the new requirement, *as well as* with old policies. In compliance with the common rule, all grant administration

provisions in HUD program regulations which are inconsistent with this final rule are rescinded, except to the extent they are required by statute or have been approved as deviations by OMB as discussed in this preamble. All grant administration provisions of uncodified program manuals, handbooks, and other materials which are inconsistent with this final rule are superseded.

The Department received two comments concerning the prohibition in the procurement provision (§ 85.36(c)(2)) against the use of statutorily imposed in-state or local geographic preferences in the evaluation of bids or proposals. The regulation provides an exception in those cases where applicable Federal statutes expressly mandate or encourage geographic preferences.

One commenter opposed the prohibition on the basis that it would have an adverse impact on the planning process for State and local governments in regard to grantee selection. The Department believes that this prohibition will have no effect on grantee selection, because grantees are not required to be selected in accordance with § 85.36.

The other commenter strongly objected to the geographic preference prohibition, characterizing it as a sweeping change which should be studied first and which could prove damaging to a city's economic development efforts. The commenter was particularly concerned about the effects on participation of local firms, contractors, and employees in projects funded under the Urban Development Action Grant (UDAG) and Community Development Block Grant (CDBG) programs. The commenter pointed out that the so-called "Section 3 Clause" (i.e., section 3 of the Housing and Urban Development Act of 1968) would provide a basis for geographic preference, but that the geographic area would be the metropolitan area, not the city.

The Department believes that the prohibition in § 85.36(c)(2) does not constitute a change from the procurement requirements that are in OMB Circular A-102, Attachment O. Although Attachment O does not specifically prohibit geographic preferences, such preferences are inconsistent with the requirement, stated in Attachment O, of maximum open and free competition.

Even though the prohibition applies to procurement by grantees and subgrantees, the prohibition will not have the consequences envisioned by the commenter. The prohibition will not affect community development activities (i.e., providing assistance to for-profits

to carry out economic development projects) under the UDAG and CDBG programs. This is because the procurement requirements do not apply to the selection of the UDAG developer, and the developer does not have to follow the requirements of Part 85, because it is not a subgrantee. In addition, a private for-profit entity receiving CDBG assistance (permitted in 24 CFR 570.203) is not required to be selected in accordance with § 85.36, and such an entity does not have to follow the requirements of Part 85 because it is not a subgrantee.

The Department agrees with the commenter that section 3 of the Housing and Urban Development Act of 1968 is a Federal statute expressly encouraging geographic preference and that the geographic preference is for the metropolitan area. Section 3, implemented for the CDBG and UDAG programs in 24 CFR 570.607, requires that to the greatest extent feasible opportunities for contracts for work in connection with CDBG or UDAG projects be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in, the same metropolitan area as the project.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1959. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule is listed as item number 1052 in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358) under Executive Order 12291 and the Regulatory Agenda.

The Catalog of Federal Domestic Assistance program numbers affected by this rule are 14.174, 14.218, 14.219, 14.221, 14.223, 14.225, 14.227, 14.230, 14.231, 14.401, 14.850, and 14.852.

List of Subjects

24 CFR Part 44

Audit requirements: Non-federal governmental entities, Reporting and recordkeeping requirements.

24 CFR Part 85

Grant administration, State and local governments, Cooperative agreements.

24 CFR Part 111

Fair housing, Cooperative agreements, Grant programs: housing and community development.

24 CFR Part 511

Rental Rehabilitation grants, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: Housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

24 CFR Part 571

Community development block grants, Grant programs: housing and community development, Grant programs: Indians, Indians.

24 CFR Part 575

Grant programs: Housing and community development, Emergency shelter grants, Reporting and recordkeeping requirements.

24 CFR Part 590

Government property, Homesteading, Housing, Intergovernmental relations, Loan programs: housing and community development.

24 CFR Part 850

Grant programs: Housing and community development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Mobile homes, Rent subsidies, Low and moderate income housing.

24 CFR Part 905

Grant programs: Housing and community development, Grant programs: Indians, Indians, Loan programs: Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 941

Loan programs: Housing and community development, Public housing, Prototype costs, Cooperative agreements, Turnkey.

24 CFR Part 968

Loan programs: Housing and community development, Public

housing, Reporting and recordkeeping requirements, Grant programs: Housing and community development, Indians.

24 CFR Part 970

Public housing.

24 CFR Part 990

Grant programs: Housing and community development, Low and moderate income housing, Public housing.

Accordingly, the Department of Housing and Urban Development (HUD) amends Title 24, Code of Federal Regulations, by adding a new Part 85—Administrative Requirements for State, Local, and Federally Recognized Indian Tribal Governments under OMB Circular A-102, as set forth at the end of this document and by amending Parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990 as follows:

PART 44—NON-FEDERAL GOVERNMENT AUDIT REQUIREMENTS

1. The authority citation for Part 44 continues to read as follows:

Authority: Single Audit Act of 1984 (31 U.S.C. 7501-7507); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 44.1, paragraph (d) is revised to read as follows:

§ 44.1 Purpose.

(d) The Act does not exempt State or local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided in Federal law or in 24 CFR Part 85.

3. Section 44.15 is revised to read as follows:

§ 44.15 Auditor selection.

In arranging for audit services, State and local governments shall follow the procurement standards prescribed in 24 CFR 85.36. The standards provide that, while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by a State statute (e.g., audit services) the State statute will take precedence.

PART 111—FAIR HOUSING ASSISTANCE PROGRAM

4. The authority citation for Part 111 continues to read as follows:

Authority: Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-19); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. In § 111.108, a new paragraph (e) is added, to read as follows:

§ 111.108 Program administration.

(e) Agencies receiving support (financial assistance in the form of grants or cooperative agreements) under this program shall comply with requirements and standards contained in 24 CFR Part 85.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

6. The authority citation for Part 511 continues to read as follows:

Authority: Sec. 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. In § 511.11, paragraph (c) is revised to read as follows:

§ 511.11 Other Federal requirements.

(c) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except for §§ 85.10, 85.11, 85.25, 85.31, and 85.40(b)(i). In lieu of § 85.25, HUD has adopted § 511.76 of this part.

8. A new § 511.76 is added, to read as follows:

§ 511.76 Program income.

(a) *General.* Grantees are neither encouraged to earn nor discouraged from earning program income in using rental rehabilitation grant amounts under this part.

(b) *Definition of program income.* "Program income" means gross income received by the grantee or State recipient (or by another party at the direction of the grantee or State recipient) which is directly generated from the use of rental rehabilitation grant amounts. Primarily, it includes repayments of the principal amount of a rental rehabilitation grant or loan, whether in installments or a lump-sum, and any interest or penalties in connection with the grant or loan, under the terms of the commitment or project assistance agreement between the

owner and the grantee or State recipient. Program income also includes interest earned on program income. Grantees or State recipients are not authorized to deduct costs incident to the generation or management of income from gross income for purposes of determining program income. Governmental fees and taxes, including income taxes, property taxes, special assessments, transfer taxes, recording fees and other normal governmental revenues, do not constitute program income if they are imposed by generally applicable law, regulation, or ordinance and are not imposed in consideration of the project's receipt of assistance under this part. Program income also does not include grant amounts returned to HUD as a result of cancellation of a project before completion, or interest on those grant amounts, or any interest earned by the grantee or State recipient on grant funds after drawdown and before disbursement for a project. (For disposition of such interest, see 24 CFR 85.21(i)).

(c) *Eligible uses.* (1) Program income may be used for any activity which is eligible under this part, including § 511.11. In particular, the total of rental rehabilitation grant amounts and rental rehabilitation program income used for any project (except under § 511.76(c)(2)) may not exceed the amount per unit allowed under § 511.10(e)(2) or 50 percent of the total project costs (except as noted in § 511.10(e)(1)).

(2) Program income may also be used to provide rental assistance to lower income tenants in properties rehabilitated through the Rental Rehabilitation Program. This includes the use of program income to pay for administrative costs associated with the provision of rental assistance but not to exceed the amount allowed for administrative fees in the Housing Voucher Program authorized under Section 8(o) of the United States Housing Act of 1937, 42 U.S.C. 1437f. In order to use program income for rental assistance, the grantee must—

(i) Use the funds to assist lower income tenants who initially occupy properties rehabilitated with rental rehabilitation grant amounts or rental rehabilitation program income;

(ii) Have a written policy which is available to the public stating that program income will be so used and specifying who is eligible to receive such assistance; and

(iii) Have an agreement with the public housing authority stating that the PHA will utilize the program income to provide rental assistance in accordance with the written policy.

(d) *Timing the use of program income.* Grantees and State recipients shall not commit available rental rehabilitation grant amounts to specific local projects if sufficient program income is on hand and available to fund the project, or a substantial portion of the project. However, in order to avoid possible overcommitment of funds, grantees shall not anticipate the receipt of program income and enter into binding commitments with owners cumulatively exceeding the total amount of program income on hand plus uncommitted rental rehabilitation grant amounts.

(e) *Accounting for and reporting program income.* Program income shall be accounted for and reported in the grantee's Annual Performance Report under § 511.81(b) and in the Cash Management Information System under § 511.74, in the manner prescribed by HUD.

(f) *Authority of State grantees.* States administering rental rehabilitation grants have discretion to choose whether program income is to be earned at all or is to be paid to or retained by the State or paid to or retained by the State recipient. The State's determination should be contained in a written agreement between the State and its State recipients. However, once earned, program income must be used and accounted for in accordance with this section by the State or by the State recipient, as applicable.

(g) *Authority of urban counties.* Because the configuration of an urban county may change from time to time, particularly at the time of requalification of an urban county in the Community Development Block Grant program, special provisions must be made for urban county program income. The urban county may determine whether program income generated by a project located in a unit of general local government which, for whatever reason, no longer participates in the urban county shall be retained by the urban county for its rental rehabilitation program or by the unit of general local government. However, the program income must otherwise be used and accounted for by the urban county and the unit of general local government in accordance with this section.

(h) *Closeout and disposition of program income.* Program income must be accounted for by the grantee when a rental rehabilitation program is closed out. "Closeout" will occur when the following conditions have been met: all grant funds from all program years (excluding program income) have been expended; the grantee does not expect (or has elected not) to receive any

additional rental rehabilitation grant amounts and the annual performance report covering the last program year has been submitted to HUD. Program income shall be treated in the following manner before and after a closeout:

(1) Program income received before closeout or on hand at the time of closeout shall be used for activities eligible under this section; and

(2) Program income received after closeout is not subject to the provisions of this section.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

9. The authority citation for Part 570 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

10. In § 570.4, paragraph (e) is revised to read as follows:

§ 570.4 Allocation of funds.

(e) Amounts remaining after closeout of a grant which are required to be returned to HUD under the provisions of § 570.509, Grant closeouts, shall be considered as funds available for reallocation.

11. In § 570.200, paragraphs (d)(2) and (f)(1)(ii) are revised to read as follows:

§ 570.200 General policies.

(d) * * *

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are governed by the procurement requirements in 24 CFR 85.36 and are not subject to the GS-18 limitation.

(f) * * *

(1) * * *

(ii) Procurement contracts governed by the requirements of 24 CFR 85.36; or

12. In § 570.201, paragraph (b) is revised to read as follows:

§ 570.201 Basic eligible activities.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or the property's retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall

be program income subject to the requirements set forth in § 570.504.

13. In § 570.402, paragraph (f)(4)(ii) is revised to read as follows:

§ 570.402 Technical assistance grants and contacts.

(f) * * *

(4) * * *

(ii) Standard Form 424;

14. In § 570.403, paragraph (i)(1) is revised to read as follows:

§ 570.403 New communities.

(i) *Exceptions to regulations.* (1) The provisions of Subpart J, Grant Administration, shall be applicable to recipients, except that a community association or private developer recipient eligible under § 570.403(b)(2) is not required to comply with competitive bidding requirements of 24 CFR 85.36(d) (2), (3), or (4).

15. In § 570.458, paragraphs (c)(1), (c)(14)(ix)(L), and (c)(14)(ix)(M) are revised to read as follows:

§ 570.458 Full applications.

(c) * * *

(1) Standard Form 424 and the urban development action grant application.

(14) * * *

(ix) * * *

(L) OMB Circular A-87 and the provisions of 24 CFR Part 85, as made applicable in § 570.502(a);

(M) All requirements imposed by HUD concerning special requirements of law, program requirements and other administrative requirements;

16. Section 570.464 is revised to read as follows:

§ 570.464 Project closeout

HUD will advise the recipient to initiate closeout procedures when HUD determines, in consultation with the recipient, that there are not impediments to closeout. Closeout shall be carried out in accordance with § 570.509 and applicable HUD guidelines.

17. Subpart J of Part 570 is revised to read as follows:

Subpart J—Grant Administration

Sec.

570.500 Definitions.

570.501 Responsibility for grant administration.

Sec.

570.502 Applicability of uniform administrative requirements.

570.503 Agreements with subrecipients.

570.504 Program income.

570.505 Use of real property.

570.506 {Reserved.}

570.507 Performance and evaluation report.

570.508 Public access to program records.

570.509 Grant closeout procedures.

570.510 Transferring projects from urban counties to metropolitan cities.

570.511 {Reserved.}

570.512 {Reserved.}

570.513 Lump sum drawdowns for financing of property rehabilitation activities.

Subpart J—Grant Administration

§ 570.500 Definitions.

For the purposes of this subpart, the following terms shall apply:

(a) "Program income" means gross income received by the recipient or a subrecipient directly generated from the use of CDBG funds. When program income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG funds;

(ii) Proceeds from the disposition of equipment purchased with CDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the recipient or by a subrecipient with CDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the recipient or by a subrecipient, that was constructed or improved with CDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using CDBG funds;

(vi) Proceeds from the sale of loans made with CDBG funds;

(vii) Proceeds from sale of obligations secured by loans made with CDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the CDBG portion of a public improvement.

(2) Program income does not include interest earned (except for interest described in § 570.513) on grant advances from the U.S. Treasury. Such interest shall be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated under section 106 (c) or (d) of the Act. Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving CDBG assistance; funds collected through special assessments used to recover the non-CDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with CDBG funds when the disposition occurs after the applicable time period specified in § 570.503(b)(7) for subrecipient-controlled property, or in § 570.505 for recipient-controlled property.

(b) "Revolving fund" means a separate fund (with a set of accounts that are independent of other program accounts) established for the purpose of carrying out specific activities which, in turn, generate payments to the fund for use in carrying out the same activities.

(c) "Subrecipient" means a public or private nonprofit agency, authority or organization, or an entity described in § 570.204(c), receiving CDBG funds from the recipient to undertake activities eligible for assistance under Subpart C. The term includes a public agency designated by a metropolitan city or urban county to receive a loan guarantee under Subpart M, but does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36, or in Attachment O of OMB Circular A-110, as applicable.

§ 570.501 Responsibility for grant administration.

(a) One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of the recipient to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The recipient is responsible for ensuring that CDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the recipient of this responsibility. The recipient is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the

actions described in § 570.910. Where a unit of general local government is participating with, or as part of, an urban county, or as part of a metropolitan city, the recipient is responsible for applying to the unit of general local government the same requirements as are applicable to subrecipients.

§ 570.502 Applicability of uniform administrative requirements.

(a) Recipients and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments", OMB Circular A-128, "Audits of State and Local Governments" (implemented at 24 CFR Part 44) and with the following sections of 24 CFR Part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments":

- (1) Section 85.3, "Definitions";
- (2) Section 85.6, "Exceptions";
- (3) Section 85.12, "Special grant or subgrant conditions for 'high-risk' grantees";
- (4) Section 85.20, "Standards for financial management systems," except paragraph (a);
- (5) Section 85.21, "Payment," except as modified by § 570.513;
- (6) Section 85.22, "Allowable costs";
- (7) Section 85.26, "Non-federal audits";
- (8) Section 85.32, "Equipment," except in all cases in which the equipment is sold, the proceeds shall be program income;
- (9) Section 85.33, "Supplies";
- (10) Section 85.34, "Copyrights";
- (11) Section 85.35, "Subawards to debarred and suspended parties";
- (12) Section 85.36, "Procurement," except paragraph (a);
- (13) Section 85.37, "Subgrants";
- (14) Section 85.40, "Monitoring and reporting program performance," except paragraphs (b) through (d) and paragraph (f);
- (15) Section 85.41, "Financial reporting," except paragraphs (a), (b), and (e);
- (16) Section 85.42, "Retention and access requirements for records";
- (17) Section 85.43, "Enforcement";
- (18) Section 85.44, "Termination for convenience";
- (19) Section 85.51 "Later disallowances and adjustments" and
- (20) Section 85.52, "Collection of amounts due."

(b) Subrecipient except subrecipients which are governmental entities, shall comply with the requirements and standards of OMB Circular No. A-122, "Cost Principles for Non Profit Organizations" or OMB Circular No. A-21, "Cost Principles for Educational Institutions," as applicable, and with the following Attachments to OMB Circular No. A-110:

(1) Attachment A, "Cash Depositories", except for paragraph 4 concerning deposit insurance;

(2) Attachment B, "Bonding and Insurance";

(3) Attachment C, "Retention and Custodial Requirements for Records", except that in lieu of the provisions in paragraph 4, the retention period for records pertaining to individual CDBG activities starts from the date of submission of the annual performance and evaluation report, as prescribed in § 570.507, in which the specific activity is reported on for the final time;

(4) Attachment F, "Standards for Financial Management Systems";

(5) Attachment H, "Monitoring and Reporting Program Performance", Paragraph 2;

(6) Attachment N, "Property Management Standards", except for paragraph 3 concerning the standards for real property, and except that paragraphs 6 and 7 are modified so that—

(i) In all cases in which personal property is sold, the proceeds shall be program income, and

(ii) Personal property not needed by the subrecipient for CDBG activities shall be transferred to the recipient for the CDBG program or shall be retained after compensating the recipient; and

(7) Attachment O, "Procurement Standards."

§ 570.503 Agreements with subrecipients.

(a) Before disbursing any CDBG funds to a subrecipient, the recipient shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over CDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the recipient effectively to monitor performance under the agreement.

(2) *Records and reports.* The recipient shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the recipient in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in § 570.504(c).

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable uniform administrative requirements, as described in § 570.502.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in Subpart K of these regulations, except that:

(i) The subrecipient does not assume the recipient's environmental responsibilities described at § 570.604; and

(ii) The subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of CDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the recipient any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with CDBG funds in excess of \$25,000 is either:

(i) Used to meet one of the national objectives in § 570.901 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

(ii) Disposed of in a manner that results in the recipient's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the

property. (Reimbursement is not required after the period of time specified in paragraph (b)(8)(i) of this section.)

§ 570.504 Program income.

(a) *Recording program income.* The receipt and expenditure of program income as defined in § 570.500(a) shall be recorded as part of the financial transactions of the grant program.

(b) *Disposition of program income received by recipients.* (1) Program income received before grant closeout may be retained by the recipient if the income is treated as additional CDBG funds subject to all applicable requirements governing the use of CDBG funds.

(2) If the recipient chooses to retain program income, that income shall affect withdrawals of grant funds from the U.S. Treasury as follows:

(i) Program income in the form of repayments to, or interest earned on, a revolving fund as defined in § 570.500(b) shall be substantially disbursed from the fund before additional cash withdrawals are made from the U.S. Treasury for the same activity. (This rule does not prevent a lump sum disbursement to finance the rehabilitation of privately owned properties as provided for in § 570.513.)

(ii) Substantially all other program income shall be disbursed for eligible activities before additional cash withdrawals are made from the U.S. Treasury.

(3) Program income on hand at the time of closeout shall continue to be subject to the eligibility requirements in Subpart C and all other applicable provisions of this part until it is expended.

(4) Unless otherwise provided in any grant closeout agreement, and subject to the requirements of paragraph (b)(5) of this section, income received after closeout shall not be governed by the provisions of this part, except that, if at the time of closeout the recipient has another ongoing CDBG grant received directly from HUD, funds received after closeout shall be treated as program income of the ongoing grant program.

(5) If the recipient does not have another ongoing grant received directly from HUD at the time of closeout, income received after closeout from the disposition of real property or from loans outstanding at the time of closeout shall not be governed by the provisions of this part, except that such income shall be used for activities that meet one of the national objectives in § 570.901 and the eligibility requirements described in section 105 of the Act.

(c) *Disposition of program income received by subrecipients.* The written agreement between the recipient and the subrecipient, as required by § 570.503, shall specify whether program income received is to be returned to the recipient or retained by the subrecipient. Where program income is to be retained by the subrecipient, the agreement shall specify the activities that will be undertaken with the program income and that all provisions of the written agreement shall apply to the specified activities. When the subrecipient retains program income, transfers of grant funds by the recipient to the subrecipient shall be adjusted according to the principles described in paragraphs (b)(2)(i) and (ii) of this section. Any program income on hand when the agreement expires, or received after the agreement's expiration, shall be paid to the recipient as required by § 570.503(b)(8).

(d) *Disposition of certain program income received by urban counties.* Program income derived from urban county program activities undertaken by or within the jurisdiction of a unit of general local government which thereafter terminates its participation in the urban county shall continue to be program income of the urban county. The urban county may transfer the program income to the unit of general local government, upon its termination of urban county participation, provided that the unit of general local government has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

§ 570.505 Use of real property.

The standards described in this section apply to real property within the recipient's control which was acquired or improved in whole or in part using CDBG funds in excess of \$25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of an entitlement recipient's participation in the entitlement CDBG program or, with respect to other recipients, until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A recipient may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the recipient provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting one of the national objectives in § 570.901 and is not a

building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in § 570.504(b) (4) or (5), as applicable, shall apply to the use of funds reimbursed.

(d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any CDBG requirements.

§ 570.506 [Reserved].

§ 570.507 Performance and evaluation report.

(a) *Content.* Each performance and evaluation report must contain completed copies of all forms and narratives prescribed by the Secretary and approved by the Office of Management and Budget, including a summary of the citizen comments received on the report, as prescribed in paragraph (c) of this section.

(b) *Timing.*

(1) *Entitlement grants.* Each entitlement grant recipient shall submit a performance and evaluation report:

(i) No later than 90 days after the completion of the most recent program year, showing the status of all activities as of the end of the program year;

(ii) No later than November 30 of each year, showing housing assistance performance as of the end of the Federal fiscal year; and

(iii) No later than 90 days after the recipient has met the criteria for grant closeout, as described in § 570.509(a).

(2) *HUD-administered small cities grants.* Each small cities recipient shall submit a performance and evaluation report on each grant:

(i) No later than 12 months after the date of the grant award and annually thereafter on the date of the award until completion of the activities funded under the grant; and

(ii) No later than 90 days after the recipient has met the criteria for grant closeout, as described in § 570.509(a). If

HUD determines that the previous report adequately describes project results, HUD will notify the recipient that a final report is not necessary.

(c) *Citizen comments on the report.*

Each recipient shall make copies of the performance and evaluation report available to its citizens in sufficient time to permit the citizens to comment on the report before its submission to HUD. Each recipient may determine the specific manner and time the report will be made available to citizens, consistent with the preceding sentence.

(Approved by the Office of Management and Budget under control No. 2506-0077)

§ 570.508 Public access to program records.

Notwithstanding 24 CFR 85.42(f), recipients shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

§ 570.509 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when HUD determines, in consultation with the recipient, that the following criteria have been met:

(1) All costs to be paid with CDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs.

(2) With respect to activities (such as rehabilitation of privately owned properties) which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with CDBG funds (but excluding program income) has actually been completed.

(3) Other responsibilities of the recipient under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the recipient shall submit to HUD a copy of the final performance and evaluation report described in § 570.507. If an acceptable report is not submitted, an audit of the recipient's grant activities may be conducted by HUD.

(2) Based on the information provided in the performance report and other relevant information, HUD, in

consultation with the recipient, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) HUD will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD.

(4) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with 24 CFR Part 44. The recipient may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the HUD field office in consultation with the recipient. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with CDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the recipient's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in § 570.505;

(iii) Compliance with requirements governing program income received subsequent to grant closeout, as described in § 570.504(b) (4) and (5); and

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into

account by HUD, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part.

(d) *Status of housing assistance plan after closeout.* Unless otherwise provided in a closeout agreement, the housing assistance plan (HAP) will remain in effect after closeout until the expiration of the fiscal year covered by the last approved HAP. The HAP will be used for allocations of HUD-assisted housing and local review and comment under 24 CFR Part 791 for purposes of achieving the housing goals under the performance criteria of § 570.903.

(e) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The recipient shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled and which had been properly incurred by the recipient in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR Part 50 or 24 CFR Part 58, as applicable, shall be determined as part of the closeout process.

(f) *Termination for cause.* In cases in which the Secretary terminates the recipient's grant under the authority of Subpart O of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is cancelled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall determine whether an environmental assessment or finding of inapplicability is required, and if such review is required, HUD shall perform it in accordance with 24 CFR Part 50.

§ 570.510 Transferring projects from urban counties to metropolitan cities.

Section 106(c)(3) of the Act authorizes the Secretary to transfer unobligated grant funds from an urban county to a new metropolitan city, provided: the city was an included unit of general local government in the urban county immediately before its qualification as a metropolitan city; the funds to be transferred were received by the county

before the qualification of the city as a metropolitan city; the funds to be transferred had been programmed by the urban county for use in the city before such qualification; and the city and county agree to transfer responsibility for the administration of the funds being transferred from the county's letter of credit to the city's letter of credit. The following rules apply to the transfer of responsibility for an activity from an urban county to the new metropolitan city.

(a) The urban county and the metropolitan city must execute a legally binding agreement which shall specify:

(1) The amount of funds to be transferred from the urban county's letter of credit to the metropolitan city's letter of credit;

(2) The activities to be carried out by the city with the funds being transferred;

(3) The county's responsibility for all expenditures and unliquidated obligations associated with the activities before the time of transfer, including a statement that responsibility for all audit and monitoring findings associated with those expenditures and obligations shall remain with the county;

(4) The responsibility of the metropolitan city for all other audit and monitoring findings;

(5) How program income (if any) from the activities specified shall be divided between the metropolitan city and the urban county; and

(6) Such other provisions as may be required by HUD.

(b) Upon receipt of a request for the transfer of funds from an urban county to a metropolitan city and a copy of the executed agreement, HUD, in consultation with the Department of the Treasury, shall establish a date upon which the funds shall be transferred from the letter of credit of the urban county to the letter of credit of the metropolitan city, and shall take all necessary actions to effect the requested transfer of funds.

(c) HUD shall notify the metropolitan city and urban county of any special audit and monitoring rules which apply to the transferred funds when the date of the transfer is communicated to the city and the county.

§§ 570.511 and 570.512 [Reserved]

§ 570.513 Lump sum drawdown for financing of property rehabilitation activities.

Subject to the conditions prescribed in this section, recipients may draw funds from the letter of credit in a lump sum to establish a rehabilitation fund in one or more private financial institutions for the purpose of financing the

rehabilitation of privately owned properties. The fund may be used in conjunction with various rehabilitation financing techniques, including loans, interest subsidies, loan guarantees, loan reserves, or such other uses as may be approved by HUD consistent with the objectives of this section. The fund may also be used for making grants, but only for the purpose of leveraging non-CDBG funds for the rehabilitation of the same property.

(a) Limitation on drawdown of grant funds.

(1) The funds that a recipient deposits to a rehabilitation fund shall not exceed the grant amount that the recipient reasonably expects will be required, together with anticipated program income from interest and loan repayments, for the rehabilitation activities during the period specified in the agreement to undertake activities, based on either:

(i) Prior level of rehabilitation activity; or

(ii) Rehabilitation staffing and management capacity during the period specified in the agreement to undertake activities.

(2) No grant funds may be deposited under this section solely for the purpose of investment, notwithstanding that the interest or other income is to be used for the rehabilitation activities.

(3) The recipient's rehabilitation program administrative costs and the administrative costs of the financial institution may not be funded through lump sum drawdown. Such costs must be paid from periodic letter of credit withdrawals in accordance with standard procedures or from program income, other than program income generated by the lump sum distribution.

(b) *Standards to be met.* The following standards shall apply to all lump sum drawdowns of CDBG funds for rehabilitation:

(1) *Eligible rehabilitation activities.* The rehabilitation fund shall be used to finance the rehabilitation of privately owned properties eligible under the general policies in § 570.200 and the specific provisions of either § 570.202, including the acquisition of properties for rehabilitation, or § 570.203.

(2) *Requirements for agreement.* The recipient shall execute a written agreement with one or more private financial institutions for the operation of the rehabilitation fund. The agreement shall specify the obligations and responsibilities of the parties, the terms and conditions on which CDBG funds are to be deposited and used or returned, the anticipated level of rehabilitation activities by the financial institution, the rate of interest and other

benefits to be provided by the financial institution in return for the lump sum deposit, and such other terms as are necessary for compliance with the provisions of this section. Upon execution of the agreement, a copy must be provided to the HUD field office for its record and use in monitoring. Any modifications made during the term of the agreement must also be provided to HUD.

(3) *Period to undertake activities.* The agreement must provide that the rehabilitation fund may only be used for authorized activities during a period of no more than two years. The lump sum deposit shall be made only after the agreement is fully executed.

(4) *Time limit on use of deposited funds.* Use of the deposited funds for rehabilitation financing assistance must start (e.g., first loan must be made, subsidized or guaranteed) within 45 days of the deposit. In addition, substantial disbursements from the fund must occur within 180 days of the receipt of the deposit. (Where CDBG funds are used as a guarantee, the funds that must be substantially disbursed are the guaranteed funds.) For a recipient with an agreement specifying two years to undertake activities, the disbursement of 25 percent of the fund (deposit plus any interest earned) within 180 days will be regarded as meeting this requirement. If a recipient with an agreement specifying two years to undertake activities determines that it has had substantial disbursement from the fund within the 180 days although it had not met this 25 percent threshold, the justification for the recipient's determination shall be included in the program file. Should use of deposited funds not start within 45 days, or substantial disbursement from such fund not occur within 180 days, the recipient may be required by HUD to return all or part of the deposited funds to the recipient's letter of credit.

(5) *Program activity.* Recipients shall review the level of program activity on a yearly basis. Where activity is substantially below that anticipated, program funds shall be returned to the recipient's letter of credit.

(6) *Termination of agreement.* In the case of substantial failure by a private financial institution to comply with the terms of a lump sum drawdown agreement, the recipient shall terminate its agreement, provide written justification for the action, withdraw all unobligated deposited funds from the private financial institution, and return the funds to the recipient's letter of credit.

(7) *Return of unused deposits.* At the end of the period specified in the

agreement for undertaking activities, all unobligated deposited funds shall be returned to the recipient's letter of credit unless the recipient enters into a new agreement conforming to the requirements of this section. In addition, the recipient shall reserve the right to withdraw any unobligated deposited funds required by HUD in the exercise of corrective or remedial actions authorized under §§ 570.910(b), 570.911, 570.912 or 570.913.

(8) *Rehabilitation loans made with non-CDBG funds.* If the deposited funds or program income derived from deposited funds are used to subsidize or guarantee repayment of rehabilitation loans made with non-CDBG funds, or to provide a supplemental loan or grant to the borrower of the non-CDBG funds, the rehabilitation activities are considered to be CDBG-assisted activities subject to the requirements applicable to such activities, except that repayment of non-CDBG funds shall not be treated as program income.

(9) *Provision of consideration.* In consideration for the lump sum deposit by the recipient in a private financial institution, the deposit must result in appropriate benefits in support of the recipient's local rehabilitation program. Minimum requirements for such benefits are:

(i) Grantees shall require the financial institution to pay interest on the lump sum deposit.

(A) The interest rate paid by the financial institution shall be no more than three points below the rate on one year Treasury obligations at constant maturity.

(B) When an agreement sets a fixed interest rate for the entire term of the agreement, the rate should be based on the rate at the time the agreement is executed.

(C) The agreement may provide for an interest rate that would fluctuate periodically during the term of the agreement, but at no time shall the rate be established at more than three points below the rate on one year Treasury obligations at constant maturity.

(ii) In addition to the payment of interest, at least one of the following benefits must be provided by the financial institution:

(A) Leverage of the deposited funds so that the financial institution commits private funds for loans in the rehabilitation program in an amount substantially in excess of the amount of the lump sum deposit;

(B) Commitment of private funds by the financial institution for rehabilitation loans at below market interest rates, at higher than normal risk,

or with longer than normal repayment periods; or

(C) Provision of administrative services in support of the rehabilitation program by the participating financial institution at no cost or at lower than actual cost.

(c) *Program income.* Interest earned on lump sum deposits and payments on loans made from such deposits are program income and, during the period of the agreement, shall be used for rehabilitation activities under the provisions of this section.

(d) *Outstanding findings.* Notwithstanding any other provision of this section, no recipient shall enter into a new agreement during any period of time in which an audit or monitoring finding on a previous lump sum drawdown agreement remains unresolved.

(e) *Prior notification.* The recipient shall provide the HUD field office with written notification of the amount of funds to be distributed to a private financial institution before distribution under the provisions of this section.

(f) *Recordkeeping requirements.* The recipient shall maintain in its files a copy of the written agreement and related documents establishing conformance with this section and concerning performance by a financial institution in accordance with the agreement.

18. Section 570.610 is revised to read as follows:

§ 570.610 Uniform administrative requirements.

The recipient, its agencies or instrumentalities, and subrecipients shall comply with the policies, guidelines, and requirements of 24 CFR Part 85 and OMB Circulars A-87, A-110, A-122, and A-128 (implemented at 24 CFR Part 44), as applicable, as they relate to the acceptance and use of Federal funds under this part. The applicable sections of 24 CFR Part 85 and OMB Circular A-110 are set forth at § 570.502.

19. In § 570.611, paragraphs (a) (1) and (2) are revised to read as follows:

§ 570.611 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified at § 570.204(c)), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply.

Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties of facilities pursuant to § 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to § 570.203, § 570.204 or § 570.455).

20. In § 570.801, paragraph (c)(2) is revised to read as follows:

§ 570.801 Payment of the cost of completing a project.

(c) * * *

(2) In the subsequent disposition of project land acquired by the unit of general local government pursuant to paragraph (c)(1) of this section, the provisions of section 110(c)(4) of Title I of the Housing Act of 1949, regarding fair use value shall not apply. Any proceeds received by the unit of general local government in the event of such disposition shall be treated as program income in accordance with § 570.504:

21. In § 570.804, paragraph (b)(7)(i) is revised to read as follows:

§ 570.804 Application for approval of financial settlement.

(b) * * *

(7) * * *

(i) All remaining project property owned by the local public agency shall be identified and the proceeds from the sale or lease of such property after financial settlement shall be treated as program income of the unit of general local government under the provisions § 570.504; provided, however, that such proceeds may be applied to the reimbursement of any funds of the unit of general local government, other than funds made available under this part for cash local grants-in-aid required on the basis of incurred net project costs, which were used for the payment of temporary loans for the project. Any remaining project land may be retained for disposition by the local public agency, or transferred to the unit of general local government for use or disposition subject to the covenants specified in § 570.801(c)(1)(i), (ii), (iii) and (iv). In the disposition of such land, the provisions of section 110(c)(4) of title I of the Housing Act of 1949, as amended, regarding fair use value shall not apply.

22. In § 570.905, paragraph (b) is revised to read as follows:

§ 570.905 Reports to be submitted by recipients.

(b) *Financial management.* Each recipient shall submit such financial reports as are determined to be necessary by the Secretary, consistent with the requirements of 24 CFR Part 85.

§ 570.906 [Removed and Reserved].

23. § 570.906 is removed and reserved.
24. In § 570.907, paragraph (a) is revised to read as follows:

§ 570.907 Records to be maintained by recipients.

(a) *Financial Management.* Recipients are to maintain records, in accordance with 24 CFR 85.20, which identify adequately the source and application of funds for grant supported activities. The records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

PART 571—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

25. The authority citation for Part 571 continues to read as follows:

Authority: Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

26. In § 571.502, paragraph (e) is revised to read as follows:

§ 571.502 Force account construction.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurements from outside vendors under this section, but not to other activities undertaken by force account. HUD may approve alternative requirements in lieu of bonding if compliance with the bonding requirements specified in § 85.36(h) is determined by HUD to be infeasible or incompatible with the Indian preference requirements set forth in § 571.503.

27. In § 571.503, paragraphs (d)(2)(iii) and (d)(3) are revised to read as follows:

§ 571.503 Indian preference requirements.

(d) * * *

(2) * * *

(iii) If one approvable bid is received, request Field Office review and

approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

28. § 571.607, paragraphs (a)(1) and (2) are revised to read as follows:

§ 571.607 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the provision of assistance by the recipient or by its subrecipients to individuals, business, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 570.202; or grants, loans, and other assistance to businesses, individuals and other private entities under § 570.203 or § 570.204)

PART 575—EMERGENCY SHELTER GRANTS

29. The authority citation for Part 575 continues to read as follows:

Authority: Sec. 101(g), Pub. L. 99-500 (approved October 18, 1986), making appropriations as provided for in sec. 525(a) of H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong. 2d Sess. (1986); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

30. In § 575.59, paragraphs (b) and (e) are revised to read as follows:

§ 575.50 Other Federal requirements

(b) *Grant Administration.* The policies, guidelines, and requirements of OMB Circulars Nos. A-110 and A-112, as they relate to the acceptance and use of emergency shelter grant amounts by

private nonprofit organizations, and OMB Circular A-87 and OMB Circular A-102 (as set forth in 24 CFR Part 85), as they relate to the acceptance and use of emergency shelter grant amounts by States and units of general local government, except that 24 CFR 85.10, 85.24(a)(1) and (c)(1), 85.40(b)-(d) and (f) do not apply. Program income is authorized to be used in accordance with § 85.25(g)(2).

(e) *Conflicts of interest.* In addition to the conflict of interest requirements in OMB Circular A-110 and 24 CFR Part 85, no person (1) who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, State recipient, or nonprofit recipient (or of any designated public agency) that receives emergency shelter grant amounts and who exercises or has exercised any functions or responsibilities with respect to assisted activities or (2) who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect to the activity, or the proceeds of any contract, subcontract, agreement related to the activity, either for his or herself or those with whom he or she has family or business ties, during his or her tenure or for one year thereafter. (HUD may grant an exception to this exclusion as provided in § 570.611(d) and (e) of this chapter.)

31. Section 575.63 is revised to read as follows:

§ 575.63 Method of payment

Payments are made to a grantee upon its request and may include a working capital advance for 30 days' cash needs or an advance of \$5,000, whichever is greater. Thereafter, the grantee would be reimbursed for the amount of its actual cash disbursement needs. If a grantee requests a working capital advance, it must base the request on a realistic, firm estimate of the amounts required to be disbursed over the 30-day period in payment of eligible activity costs. Payments with respect to grants of \$120,000 or more will be made by letter of credit if the grantee meets the requirements of 24 CFR Part 85.

PART 590—URBAN HOMESTEADING

32. The authority citation for Part 590 continues to read as follows:

Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of

Housing and Urban Development Act (42 U.S.C. 3535(d)).

33. In § 590.11, paragraph (a)(1) is revised to read as follows:

§ 590.11 Applications.

(a) * * *

(1) Standard Form-424;

PART 850—HOUSING DEVELOPMENT GRANTS

34. The authority citation for Part 850 continues to read as follows:

Authority: Sec. 17 of the U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

35. In § 850.33, paragraph (a) is revised to read as follows:

§ 850.33 Submission requirements.

* * * * *

(a) *Standard form.* Standard Form 424.

* * * * *

36. In § 850.35, paragraph (g) is revised to read as follows:

§ 850.35 Other program requirements.

* * * * *

(g) *Grant administration.* The policies, guidelines, and requirements of 24 CFR Part 85 (except for §§ 85.23, 85.24, 85.25, 85.30, 85.31(c) 85.40(b)-(d) and (f), and 85.50) and OMB Circular A-122, as they relate to the acceptance and use of housing development grant amounts under this part. (24 CFR 85.36 does not apply to a grantee's selection of a project owner, because that selection is not a procurement of property or services. A project owner is not required to follow the requirements of 24 CFR 85.36 because Part 85 applies only to State, local, and Indian tribal governments.)

37. Section 850.69 is revised to read as follows:

§ 850.69 Financial management systems.

Each grantee is required to maintain a financial management system that complies with 24 CFR 85.20.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

38. The authority citation for Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c and 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

39. In § 882.516, paragraph (e) is revised to read as follows:

§ 882.516 Maintenance, operation and inspections.

* * * * *

(e) Periodic PHA audits must be conducted as required by HUD, in accordance with guidelines prescribed by 24 CFR Part 44.

PART 905—INDIAN HOUSING

40. The authority citation for Part 905 continues to read as follows:

Authority: Sec. 3, 4, 5, 6, 9, 11, 12, and 16 of the United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437d, 1437g, 1437j; and 1437n); sec. 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

41. In § 905.107, new paragraphs (g) and (h) are added to read as follows:

§ 905.107 Compliance with other Federal requirements.

* * * * *

(g) *Audits.* IHAs that receive financial assistance under this part shall comply with audit requirements in 24 CFR Part 44.

(h) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and in 24 CFR Part 990, Subpart B.

42. In § 905.203, paragraph (d)(1) is republished and paragraphs (b), (c), and (d)(2) are revised to read as follows:

§ 905.203 Production methods and requirements.

* * * * *

(b) *Turnkey method.* Under the Turnkey method, the IHA advertises for developers to submit proposals to build a Project described in the IHA's invitation for proposals. The Invitation for Proposals may, when approved by HUD, prescribe the sites to be used. The IHA selects, subject to HUD approval, the best of the proposals received, taking into consideration price, design, the developer's experience and other evidence of the developer's ability to complete the Project. After HUD approval of the proposal selected by the IHA, the working drawings and specifications are agreed to by the developer, the IHA, and HUD, and the developer and the IHA enter into a Contract of Sale. Upon completion of the project in accordance with the contract of sale, the IHA purchases the Project from the developer. The IHA may employ an architect to assist in

evaluating proposals and negotiating the working drawings and specifications. The IHA provides inspection services by an architect, engineer or other qualified person. Notwithstanding 24 CFR 85.36(h), the IHA may require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be acceptable. The decision by the IHA whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

(c) *Conventional method.* Under the Conventional Method, the IHA, after HUD approval of the plans and specifications, shall advertise for contractors to build the project, and the award shall be made to the lowest, responsible bidder. The contractor shall be required to provide assurance in the form of 100 percent performance and payment bonds or, notwithstanding 24 CFR 85.36(h), a lesser percentage or other security approved by HUD. The contractor receives progress payments during construction, and a final HUD-approved payment upon completion in accordance with the contract.

(d) *Modified Turnkey (or Modified Conventional) Method.* Under this modified method the procedure is the same as under the Conventional Method, except that:

(1) The developer will receive no progress payments from the IHA and will be responsible for acceptable completion before receiving any payment from the IHA; and

(2) Notwithstanding 24 CFR 85.36(h), the IHA may, but need not, require the developer to furnish assurance in the form of 100 percent performance and payment bonds, or other security as may be acceptable. The decision by the IHA whether or not to require bonding or other security shall be included in the invitation for bids or proposals.

43. In § 905.211, paragraph (b) is revised to read as follows:

§ 905.211 Contracts in connection with development

(b) Notwithstanding 24 CFR 85.36(g), the IHA shall not, without HUD approval, enter into any contract in connection with the development of a Project, including contracts for work, materials or equipment, or for architectural, engineering, consultant, legal, or other professional services. This requirement does not apply to MHO Agreements in the form prescribed by HUD, or to such other types of contracts as HUD may specify.

PART 941—PUBLIC HOUSING DEVELOPMENT

44. The authority citation for Part 941 continues to read as follows:

Authority: Secs. 4, 5, and 9 of the United States Housing Act of 1937 (42 U.S.C. 1437b, 1437c, and 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

45. In § 941.102, the introductory text is republished and paragraph (a) is revised to read as follows:

§ 941.102 Development methods.

A PHA may use one of three different methods to develop a project. The following are brief summaries of these development methods.

(a) *Conventional.* The conventional method may be used for either new construction or rehabilitation. The PHA is responsible for selecting a site or property and designing the project. After field office approval of a PHA proposal which identifies a site or property, the ACC is executed, site engineering studies or property inspections are performed, and the PHA acquires the sites or property. The PHA contracts with an architect to prepare the project design and construction documents. Following field office approval of these documents, the PHA advertises for competitive bids to build or rehabilitate the project on the PHA-owned site and, after field office approval, awards a construction contract to the lowest responsible bidder. The contractor is required to furnish a 100 percent performance and payment bond or, notwithstanding 24 CFR 85.36(h), other assurances approved by the field office. The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the project in accordance with the construction contract.

46. In § 941.208, a new paragraph (g) is added to read as follows:

§ 941.208 Other Federal requirements.

(g) *Applicability of 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants made under this part on or after October 1, 1988, except that § 941.502 is not subject to § 85.36(g), and as otherwise specified in this part.

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

47. The authority citation for Part 968 continues to read as follows:

Authority: Secs. 6 and 14, United States Housing Act of 1937 (42 U.S.C. 1437d and 1437l); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

48. In § 968.9, paragraph (j) is revised to read as follows:

§ 968.9 Other program requirements.

(j) *Applicability 24 CFR Part 85.* The Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments set forth in 24 CFR Part 85 are applicable to grants under this part, except as specified in this part and in 24 CFR 990.103(c) and 24 CFR 990.201.

49. In § 968.12, paragraphs (b), (c), (d), (e), (f), and (g) are revised to read as follows:

§ 968.12 Contracting requirements.

(b) *Formal advertising requirements.* For each construction or equipment contract over \$25,000, the PHA shall conduct formal advertising as discussed in 24 CFR 85.36(d)(2), except for procurement under the HUD Consolidated Supply Program.

(c) *Bonding requirements.* For each construction or equipment contract over \$25,000, the contractors shall furnish a performance and payment bond for 100 percent of the contract price or, notwithstanding 24 CFR 85.36(h) and as may be required by law, separate performance and payment bonds, each for 50 percent or more of the contract price, or a 20 percent cash escrow, or a 25 percent letter of credit.

(d) *PHA agreement with architect/engineer.* The PHA shall obtain architectural/engineering services through the competitive negotiation process, except where FFY 1981 or subsequent year funds are being used to finance additional services under an existing contract. Notwithstanding 24 CFR 85.36(g), the PHA shall comply with HUD requirements either to submit the contract for prior HUD approval before execution or to certify that the scope of work is consistent with any agreements reached with HUD, and that the fee is appropriate and does not exceed the HUD-approved budget amount.

(e) *Construction and bid documents.* Notwithstanding 24 CFR 85.36(g), the

PHA shall comply with HUD requirements either to—

(1) Submit for prior HUD approval complete construction and bid documents before inviting bids or

(2) Certify to receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and that the bid documents are complete and include all mandatory items.

(f) *Contract award.* The PHA shall obtain HUD approval of the proposed award of modernization construction and equipment contracts if the bid amount exceeds the HUD-approved budget amount or if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2) (i) through (iv). In all other instances, the PHA shall make the award without HUD approval after the PHA has certified that—

(1) The bidding procedures and award were conducted in compliance with State, tribal or local laws and Federal requirements,

(2) The award does not exceed the approved budget amount and does not meet the criteria in § 85.36(g)(2) (i) through (iv) for prior HUD approval, and

(3) HUD clearance has been obtained for the award under previous participation procedures, including absence of the contractor from the HUD Consolidated List of Debarred, Suspended or Ineligible Contractors and Grantees.

(g) *Contract modifications.* Notwithstanding 24 CFR 85.36, except in an emergency endangering life or property, the PHA shall comply with HUD requirements either to submit for prior HUD approval the proposed contract modifications or to certify that such modifications are within the scope of the contract and that any additional costs are within the latest HUD-approved budget or otherwise approved by HUD.

50. Section 968.13 is revised to read as follows:

§ 968.13 Fund requisitions.

To request modernization funds against the total approved modernization budget, the PHA shall:

(a) Submit, in a form prescribed by HUD, a request to the HUD office for only the amount of modernization funds needed for actual cash disbursements, identifying the amounts by account and date due; and

(b) Submit the latest required progress reports under § 968.14, unless the first required report is not yet due.

51. Section 968.17 is revised to read as follows:

§ 968.17 Fiscal closeout of a modernization program.

Upon completion of a modernization program, the PHA shall submit the actual modernization cost certificate, in a form prescribed by HUD, to the HUD office for review, audit verification and approval. The audit shall follow the guidelines prescribed by 24 CFR Part 44. If the audited modernization cost certificate indicates that excess funds have been approved, the PHA shall dispose of the excess funds as directed by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the PHA shall take such corrective actions as HUD may direct.

(Approved by the Office of Management and Budget under control number 2577-0049)

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

52. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 18, of the United States Housing Act of 1937 (42 U.S.C. 1437p); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

53. Section 970.1 is revised to read as follows:

§ 970.1 Purpose.

This part sets forth requirements for HUD approval of a public housing agency's application for demolition or disposition (in whole or in part) of public housing projects assisted under the U.S. Housing Act of 1937 (the "Act"). The rules and procedures contained in 24 CFR Part 85 are inapplicable.

PART 990—ANNUAL CONTRIBUTIONS FOR OPERATING SUBSIDY

54. The authority citation for Part 990 continues to read as follows:

Authority: Sec. 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

55. In § 990.103, a new paragraph (c) is added to read as follows:

§ 990.103 Applicability of PFS.

(c) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program

in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

56. Section 990.109, paragraph (e)(3) is revised to read as follows:

§ 990.109 Projected income level.

* * * * *

(e) * * *

(3) *Total.* The estimated total amount of income for investments and Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount. This amount shall be added to the projected average dwelling rental income per unit to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

57. A new Subpart B—Financial Management systems, Monitoring and reporting—is added to Part 990, to read as follows:

Subpart B—Financial Management Systems, Monitoring and Reporting

§ 990.201 Purpose—General policy on financial management, monitoring and reporting.

The financial management systems, reporting and monitoring on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937.

§ 990.202 Applicability.

The provisions of this Subpart B are applicable to the development, modernization (CIAP), and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the housing owned by the PHAs of the Virgin Islands, Guam, Puerto Rico and Alaska.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS UNDER OMB CIRCULAR A-102

58. A new Part 85 is added, to read as set forth at the end of this document.

The part heading is revised to read as set forth below.

PART 85—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL AND FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

Subpart A—General

Sec.

- 85.1 Purpose and scope of this part.
- 85.2 Scope of subpart.
- 85.3 Definitions.
- 85.4 Applicability.
- 85.5 Effect on other issuances.
- 85.6 Additions and Exceptions.

Subpart B—Pre-Award Requirements

- 85.10 Forms for applying for grants.
- 85.11 State plans.
- 85.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 85.20 Standards for financial management systems.
- 85.21 Payment requirements.
- 85.22 Allowable costs.
- 85.23 Period of availability of funds.
- 85.24 Matching or cost sharing.
- 85.25 Program income.
- 85.26 Non-Federal audits.

Changes, Property, and Subawards

- 85.30 Changes under discretionary (project) awards.
- 85.31 Real property.
- 85.32 Equipment.
- 85.33 Supplies.
- 85.34 Copyrights.
- 85.35 Subawards to debarred and suspended parties.
- 85.36 Procurement.
- 85.37 Subgrants.

Reports, Records Retention, and Enforcement

- 85.40 Monitoring and reporting program performance.
- 85.41 Financial reporting.
- 85.42 Retention and access requirements for records.
- 85.43 Enforcement.
- 85.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 85.50 Closeout.
- 85.51 Later disallowances and adjustments.
- 85.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: February 10, 1988.

Carl D. Covitz,

Acting Secretary.

BILLING CODE 4210-32-M

DEPARTMENT OF JUSTICE

28 CFR Part 66

[Atty. Gen. Order No. 1252-88]

FOR FURTHER INFORMATION CONTACT:

Jack A. Nadol, Department of Justice, Office of Justice Programs, 633 Indiana Ave., NW., Room 942, Washington, DC 20531, (202) 724-7611.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Department of Justice has adopted uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments which will be applicable to nonprocurement assistance activities of components of the Department of Justice which have grant-making authority. These include: The Office of Justice Programs, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, the Bureau of Justice Statistics, the National Institute of Corrections, the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, and the Drug Enforcement Administration.

Drug Enforcement Administration (DEA) contracts that are issued under 21 U.S.C. 873(a)(7) are exempt. However, in the event DEA is authorized to fund grants to state and local agencies in the future, DEA would be subject to the common grants management regulation.

With respect to grants and cooperative agreements of the Office of Justice Programs (OJP), this regulation replaces Appendix 3 of OJP Guideline Manual 7100.1C, Financial and Administrative Guide for Grants.

List of Subjects in 28 CFR Part 66

Administrative practice and procedures, Grant programs—Law Grant administration, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

Edwin Meese III,

Attorney General.

February 25, 1988.

1. Part 66 is added to read as set forth at the end of this document.

PART 66—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 66.1 Purpose and scope of the part.
- 66.2 Scope of subpart.
- 66.3 Definitions.
- 66.4 Applicability.
- 66.5 Effect on other issuances.
- 66.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 66.10 Forms for applying for grants.
- 66.11 State plans.
- 66.12 Special grant or subgrant conditions for "high-risk" recipients.

Subpart C—Post-Award Requirements

Financial Administration

- 66.20 Standards for financial management systems.
- 66.21 Payment requirements.
- 66.22 Allowable costs.
- 66.23 Period of availability of funds.
- 66.24 Matching or cost sharing.
- 66.25 Program Income.
- 66.26 Non-Federal audits.

Changes, Property, and Subawards

- 66.30 Changes.
- 66.31 Real Property.
- 66.32 Equipment.
- 66.33 Supplies.
- 66.34 Copyrights.
- 66.35 Subawards to debarred and suspended parties.
- 66.36 Procurement.
- 66.37 Subgrants.

Reports, Records Retention, and Enforcement

- 66.40 Monitoring and reporting program performance.
- 66.41 Financial reporting.
- 66.42 Retention and access requirements for records.
- 66.43 Enforcement.
- 66.44 Termination for convenience.

Subpart D—After the Grant Requirements

- 66.50 Closeout.
- 66.51 Later disallowances and adjustments.
- 66.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: The Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended); Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended); Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.* (as amended); 18 U.S.C. 4042; and U.S.C. 4351-4353.

2. Newly added Part 66 is further amended by revising §§ 66.32(a) and 66.33(a) to read as follows:

§ 66.32 Equipment.

(a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, Section 808, requires that the title to all equipment and supplies

purchased with Section 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in Section 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal purposes elsewhere in the State prior to using it or disposing of it in any other manner.

§66.33 Supplies

(a) The Omnibus Crime Control and Safe Streets Act of 1968, as amended, Pub. L. 90-351, Section 808, requires that the title to all equipment and supplies purchased with Section 403 or 1302 (block or formula funds) shall vest in the criminal justice agency or nonprofit organization that purchased the property if it certifies to the State office described in Section 408 or 1308 that it will use the property for criminal justice purposes. If such certification is not made, title to the property shall vest in the State office, which shall seek to have the property used for criminal justice purposes elsewhere in the State prior to using it or disposing of it in any other manner.

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

29 CFR Part 97

FOR FURTHER INFORMATION CONTACT: Theodore Goldberg, Telephone: 202-523-9174.

ADDITIONAL SUPPLEMENTARY

INFORMATION: As indicated in the previously-published Department of Labor specific NPRM preamble to these rules, (52 FR 21830, June 9, 1987), the Department of Labor had previously published regulations implementing both OMB Circulars A-102, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*, and A-110, *Uniform Administrative Requirements for Grants and Cooperative Agreements to Non-profit Institutions*, at 41 CFR Part 29-70. With the adoption of this common rulemaking, notice is given that 41 CFR Part 29-70 is no longer applicable to grants to State and local governments (including federally recognized Indian Tribal governments) and Indian and Native American entities.

List of Subjects in 29 CFR Part 97

Accounting, Administrative practice and procedure, Grant programs—grants and administration, Insurance, Reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations is amended by adding Part 97 as set forth at the end of this document.

Ann McLaughlin,
Secretary of Labor.

PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 97.1 Purpose and scope of this part.
 - 97.2 Scope of subpart.
 - 97.3 Definitions.
 - 97.4 Applicability.
 - 97.5 Effect on other issuances.
 - 97.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 97.10 Forms for applying for grants.
- 97.11 State plans.
- 97.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 97.20 Standards for financial management systems.
- 97.21 Payment.
- 97.22 Allowable costs.
- 97.23 Period of availability of funds.
- 97.24 Matching or cost sharing.
- 97.25 Program income.
- 97.26 Non-Federal audit.

Changes, Property, and Subawards

- 97.30 Changes.
- 97.31 Real property.
- 97.32 Equipment.
- 97.33 Supplies.
- 97.34 Copyrights.
- 97.35 Subawards to debarred and suspended parties.
- 97.36 Procurement.
- 97.37 Subgrants.

Reports, Records Retention, and Enforcement

- 97.40 Monitoring and reporting program performance.
- 97.41 Financial reporting.
- 97.42 Retention and access requirements for records.
- 97.43 Enforcement.
- 97.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 97.50 Closeout.
- 97.51 Later disallowances and adjustments.
- 97.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; OMB Circular A-102.

BILLING CODE 4510-23-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1470

FOR FURTHER INFORMATION CONTACT: Lee Buddendeck—202-653-5320.

ADDITIONAL SUPPLEMENTARY

INFORMATION: Due to the nature of the grantees of the Federal Mediation and Conciliation Service and/or their representatives as tax supported or dues paying entities, the Service does not consider in kind contributions to be an acceptable grantee match. Because the grants program has a very small annual appropriation, grantee changes to their grant projects for indirect costs are discouraged.

List of Subjects in 29 CFR Part 1470

Grant programs, Grants Administration, reporting and recordkeeping requirements.

Title 29 of the Code of Federal Regulations is amended by adding Part 1470 as set forth at the end of this document.

Kay McMurray,
Director.

PART 1470—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 1470.1 Purpose and scope of this part.
 - 1470.2 Scope of subpart.
 - 1470.3 Definitions.
 - 1470.4 Applicability.
 - 1470.5 Effect on other issuances.
 - 1470.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1470.10 Forms for applying for grants.
- 1470.11 State plans.
- 1470.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1470.20 Standards for financial management systems.
- 1470.21 Payment.
- 1470.22 Allowable costs.
- 1470.23 Period of availability of funds.
- 1470.24 Matching or cost sharing.
- 1470.25 Program income.
- 1470.26 Non-Federal audit.

Changes, Property, and Subawards

- 1470.30 Changes.
- 1470.31 Real property.
- 1470.32 Equipment.
- 1470.33 Supplies.
- 1470.34 Copyrights.
- 1470.35 Subawards to debarred and suspended parties.

- 1470.36 Procurement.
1470.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1470.40 Monitoring and reporting program performance.
1470.41 Financial reporting.
1470.42 Retention and access requirements for records.
1470.43 Enforcement.
1470.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1470.50 Closeout.
1470.51 Later disallowances and adjustments.
1470.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 29 U.S.C. 175a.

BILLING CODE 6732-01-M

DEPARTMENT OF DEFENSE

32 CFR Part 278

FOR FURTHER INFORMATION CONTACT: Mr. Ronald D. Good, or Mr. William L. Blumberg, Telephone (202) 697-8282.

ADDITIONAL SUPPLEMENTARY INFORMATION: With this rule, the Department of Defense will adopt rules and regulations governing the administration and use of grants and cooperative agreements with state and local government. This "common" rule establishes consistency and uniformity among the Office of the Secretary of Defense, Military Departments and Defense Agencies in the employment and management of grants and cooperative agreements with state, local, and federally recognized Indian tribal governments. There are no deviations or differences between the model regulation promulgated by the Office of Management and Budget, which forms the basis for the "common" rule, and the Department of Defense regulation governing the same.

List of Subjects in 32 CFR Part 278

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Insurance, Reporting and Recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended by adding Part 278 as set forth at the end of this document.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

February 18, 1988.

PART 278—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 278.1 Purpose and scope of this part.
278.2 Scope of subpart.
278.3 Definitions.
278.4 Applicability.
278.5 Effect on other issuances.
278.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 278.10 Forms for applying for grants.
278.11 State plans.
278.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 278.20 Standards for financial management systems.
278.21 Payment.
278.22 Allowable costs.
278.23 Period of availability of funds.
278.24 Matching or cost sharing.
278.25 Program income.
278.26 Non-Federal audit.

Changes, Property, and Subawards

- 278.30 Changes.
278.31 Real property.
278.32 Equipment.
278.33 Supplies.
278.34 Copyrights.
278.35 Subawards to debarred and suspended parties.
278.36 Procurement.
278.37 Subgrants.

Reports, Records Retention, and Enforcement

- 278.40 Monitoring and reporting program performance.
278.41 Financial reporting.
278.42 Retention and access requirements for records.
278.43 Enforcement.
278.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 278.50 Closeout.
278.51 Later disallowances and adjustments.
278.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301; 10 U.S.C. 113.

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

34 CFR Parts 74 and 80

FOR FURTHER INFORMATION CONTACT: Mary Hughes, Telephone (202) 732-7400.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Secretary establishes a new Part 80 to implement the common regulations to be used by all Federal agencies under Office of Management and Budget (OMB) Circular A-102. The Secretary simultaneously makes technical amendments to the existing Part 74 to limit its application to the institutions covered by OMB Circular A-110. The changes to Part 74 are contained in a separate final rulemaking document published elsewhere in this issue of the Federal Register.

The Department of Education currently implements both OMB Circulars A-102 and A-110 in Part 74 of the Department's regulations (34 CFR Part 74). Circular A-110 applies to institutions of higher education, hospitals, and other nonprofit organizations and contains provisions similar to those contained in Circular A-102 for State and local governments and Indian tribal organizations. However, due to the significant changes contained in the common regulations implementing revised Circular A-102, the common regulations and current Circular A-110 can no longer conveniently be implemented together.

As a result, State and local governments and Indian tribal organizations are now subject to the less burdensome requirements in Part 80 and other grantees are subject to the requirements of Part 74. However, the Department is aware that the President's Council on Management Improvement has initiated a task force to review Circular A-110. If, as a result of that review, the differences between A-110 and A-102 are reduced sufficiently, the Department may again implement the two Circulars in a single set of regulations.

The Secretary published in the Federal Register of June 9, 1987 (52 FR 21864) proposed technical amendments to 34 CFR Part 74. These proposed amendments were designed to limit the applicability of Part 74 to institutions of higher education, hospitals, and other nonprofit organizations. The Secretary is publishing those amendments as final regulations elsewhere in this issue of the Federal Register.

Section ____ .5 of the common regulations provides—

All other grants administration provisions of codified program regulations, program

manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § _____.6.

As stated in the general preamble to this rulemaking document, each agency must specify those regulations that are revoked under this section. The Department is in the process of identifying those program regulations that must be revoked and in the near future will publish a notice of proposed rulemaking to take appropriate action. The Secretary plans to publish the final rulemaking document regarding revocations before the effective date for Part 80, October 1, 1988.

There are hundreds of cross references to the current Part 74 throughout the Department's program regulations. These cross references are being reviewed to determine which of them should be amended to refer only to Part 80, to Part 74, or only to Part 74. The technical amendments necessary to make these changes will be published in the document addressing inconsistent program regulations.

In the notice of proposed rulemaking for the common regulations the Secretary proposed three changes to the common regulations. The Secretary did not receive any comments on these proposed changes. They are discussed below.

The first change is necessary under section 412 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3472. Under this section the Secretary may delegate the functions of the Department only to officers and employees of the Department. However, § _____.6(b) of the common regulations has the effect of delegating one of the Secretary's functions to employees of the Office of Management and Budget—authorizing OMB to grant exceptions to the common regulations as promulgated by the Secretary for the programs administered by the Department of Education. In order to avoid any conflict with the DEOA, the Secretary revises § _____.6(b) so that the Secretary may authorize exceptions to the common regulations after consultation with appropriate officials of OMB.

The second change is necessary to ensure that disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid program (20 U.S.C. 631-647) are administered consistently with their statutory purpose. Under the disaster assistance program the Department provides assistance to local educational agencies (LEAs) that have been affected by certain major disasters. Under the

construction program the Department provides assistance to LEAs to build educational facilities. Under the statute an LEA must use the facility to educate eligible children. However, if there are no longer any eligible children to educate at the facility, the facility may be used for any purpose subject only to the requirement that the LEA maintain accessibility to the facility for 20 years after its construction. The application of § _____.31(c) is inappropriate in the context of these statutory programs. A similar analysis applies to the equipment provisions of § _____.32 (c), (d), (e), and (g). Therefore the Secretary exempts the disaster assistance program and the Impact Aid construction program from the requirements of §§ 80.31(c) and 80.32 (c), (d), (e), and (g).

The third change is necessary to implement the five-year record retention rule required by section 437 of the General Education Provisions Act (GEPA) (20 U.S.C. 1232f). Section _____.42(b) of the common regulations requires a recipient to maintain a record for only 3 years unless a longer retention period is necessary to resolve issues pursuant to any litigation, claim, negotiation, audit, or other action involving the record. The Secretary adds a paragraph (b)(4) to § _____.42 of the common regulations to clarify that a recipient must maintain a record for a minimum of five years after the completion of the activity for which funds are used under an "applicable program" covered by GEPA.

This amendment has the effect of establishing a minimum 5-year record retention period under most programs administered by the Department. However, we note that certain programs such as those programs administered by the Commissioner of the Rehabilitative Services Administration under the Rehabilitation Act of 1973, as amended, still are subject to the 3-year record retention rule contained in the common regulations.

Finally, the Secretary adds authority citations after every substantive provision of the common regulations. These authority citations are required under section 431 of GEPA (20 U.S.C. 1232(a)(2)).

List of Subjects in 34 CFR Part 80

Accounting, Administrative practice and procedures, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

Dated: February 16, 1988.

[Catalog of Federal Domestic Assistance Number: Not Applicable]

William J. Bennett,
Secretary of Education.

The Secretary amends Title 34 of the Code of Federal Regulations by adding a new 34 CFR Part 80 as set forth below.

1. Part 80 is added as set forth at the end of this document:

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 80.1 Purpose and scope of this part.
 - 80.2 Scope of subpart.
 - 80.3 Definitions.
 - 80.4 Applicability.
 - 80.5 Effect on other issuances.
 - 80.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 80.10 Forms of applying for grants.
- 80.11 State plans.
- 80.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 80.20 Standards for financial management systems.
- 80.21 Payment.
- 80.22 Allowable costs.
- 80.23 Period of availability of funds.
- 80.24 Matching or cost sharing.
- 80.25 Program income.
- 80.26 Non-Federal audit.

Changes, Property, and Subawards

- 80.30 Changes.
- 80.31 Real property.
- 80.32 Equipment.
- 80.33 Supplies.
- 80.34 Copyrights.
- 80.35 Subawards to debarred and suspended parties.
- 80.36 Procurement.
- 80.37 Subgrants.

Reports, Records Retention, and Enforcement

- 80.40 Monitoring and reporting program performance.
- 80.41 Financial reporting.
- 80.42 Retention and access requirements for records.
- 80.43 Enforcement.
- 80.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 80.50 Closeout.
- 80.51 Later disallowances and adjustments.
- 80.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Appendix to Part 80—Audit Requirements for State and Local Governments

Authority: 20 U.S.C. 3474; OMB Circular A-102, unless otherwise noted.

2. Part 80 is further amended, as follows.

a. Section 80.3 is amended by adding paragraph (1) following the definition of "State" to read as follows:

§ 80.3 Definitions

(1) The definition of "State" in this section is used for the purpose of determining the scope of Part 80 regulations. Some program regulations contain different definitions for "State" based on program statute eligibility requirements.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

b. Section 80.6, paragraph (b), is revised to read as follows:

§ 80.6 Additions and exceptions.

(b) Exceptions for classes of grants or grantees may be authorized only by the Secretary after consultation with OMB.

c. Section 80.22 is amended by revising paragraph (b) to read as follows:

§ 80.22 Allowable costs.

(b) For each kind of organization, there is a set of Federal principles for determining allowable costs. For the costs of a State, local, or Indian tribal government, the Secretary applies the cost principles in OMB Circular A-87, as amended on June 9, 1987.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

d. A note is added following § 80.26, to read as follows:

§ 80.26 Non-Federal audit.

Note: The requirements for non-Federal audits are contained in the Appendix to Part 80—Audit Requirements for State and Local Governments.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

e. Section 80.31 is amended by adding a new paragraph (d) to read as follows:

§ 80.31 Real property.

(d) The provisions of paragraph (c) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

f. Section 80.32 is amended by adding a new paragraph (h) to read as follows:

§ 80.32 Equipment.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241-1(b)-(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631-647.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

g. Section 80.42(b) is amended by adding a new paragraph (b)(4) to read as follows:

§ 80.42 Retention and access requirements for records.

(b) *Length of retention period.* * * *
(4) A recipient that receives funds under a program subject to 20 U.S.C. 1232f (section 437 of the General Education Provisions Act) shall retain records for a minimum of five years after the starting date specified in paragraph (c) of this section.

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

h. An authority citation is added after each section in Part 80 to read as follows:

(Authority: 20 U.S.C. 3474; OMB Circular A-102.)

PART 74—[AMENDED]

Appendix G to Part 74—[Redesignated as Appendix to Part 80]

i. Appendix G—Audit Requirements for State and Local Governments at the end of 34 CFR Part 74 is redesignated as "Appendix to Part 80—Audit Requirements for State and Local Governments" and added to the end of Part 80.

BILLING CODE 4000-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1207

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas at 200-523-3214 (FTS 523-3214).

ADDITIONAL SUPPLEMENTARY INFORMATION: The National Historical Publications and Records Commission (NHPRC) program provides grants, when funds are available, to State and local governments, historical societies, archives, libraries and associations for the preservation, arrangement and description of historical records and for a broad range of archival training and development programs. The Catalog of Federal Domestic Assistance number is 89.003.

List of Subjects in 36 CFR Part 1207

Accounting, Administrative practice and procedure, Grant programs—Archives and records, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended by adding Part 1207 as set forth at the end of this document.

Dated: February 17, 1988.

Don W. Wilson,
Archivist of the United States.

PART 1207—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 1207.1 Purpose and scope of this part.
 - 1207.2 Scope of subpart.
 - 1207.3 Definitions.
 - 1207.4 Applicability.
 - 1207.5 Effect on other issuances.
 - 1207.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1207.10 Forms for applying for grants.
- 1207.11 State plans.
- 1207.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

- Financial Administration
- 1207.20 Standards for financial management systems.
 - 1207.21 Payment.
 - 1207.22 Allowable costs.
 - 1207.23 Period of availability of funds.
 - 1207.24 Matching and cost sharing.
 - 1207.25 Program income.
 - 1207.26 Non-Federal audit.

Changes, Property, and Subawards

- 1207.30 Changes.
- 1207.31 Real property.
- 1207.32 Equipment.
- 1207.33 Supplies.
- 1207.34 Copyrights.
- 1207.35 Subawards to debarred and suspended parties.
- 1207.36 Procurement.
- 1207.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1207.40 Monitoring and reporting program performance.
- 1207.41 Financial reporting.
- 1207.42 Retention and access requirements for records.
- 1207.43 Enforcement.
- 1207.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1207.50 Closeout.
- 1207.51 Later disallowances and adjustments.
- 1207.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 44 U.S.C. 2104.

BILLING CODE 7515-01-M

VETERANS ADMINISTRATION**38 CFR Part 43****FOR FURTHER INFORMATION CONTACT:**

Gail A. Gompf, Director, Office of Intergovernmental Affairs (00A1), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-3116.

ADDITIONAL SUPPLEMENTARY

INFORMATION: This new authority codifies the long-standing OMB Circular A-102 used in whole or in part by all Federal agencies in their grant programs. The effect upon the Veterans Administration (VA) will be felt in its State home acquisition or construction grants and its State cemetery grants. Specifically, the regulations will affect applicants for Federal assistance from the VA for acquisition or construction of State extended care facilities and State cemeteries.

Applicants shall follow all applicable standard instructions promulgated by these final regulations. All other grant administration provisions of codified program regulations, program manuals, handbooks, and other nonregulatory materials which are inconsistent with these final regulations are superseded, except to the extent that they are required by statute, or authorized in accordance with certain exceptions (see § 43.6).

These regulations will not apply to payments to States at statutorily required per diem rates for each eligible veteran who receives care in a recognized State home (38 U.S.C. 641(a)). These payments are excepted from these regulations because the payments are computed on a per diem basis (38 CFR 43.4(a)).

List of Subjects in 38 CFR Part 43

Accounting, Administrative practice and procedure, Grant programs—State cemeteries and State home facilities, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 38 of the Code of Federal Regulations is amended by adding Part 43 as set forth at the end of this document.

Thomas K. Turnage,
Administrator.

Approved: February 3, 1988.

(Authority: 38 U.S.C. 641-643)

PART 43—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS**Subpart A—General**

Sec.

- 43.1 Purpose and scope of this part.
- 43.2 Scope of subpart.
- 43.3 Definitions.
- 43.4 Applicability.
- 43.5 Effect on other issuances.
- 43.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 43.10 Forms for applying for grants.
- 43.11 State plans.
- 43.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 43.20 Standards for financial management systems.
- 43.21 Payment.
- 43.22 Allowable costs.
- 43.23 Period of availability of funds.
- 43.24 Matching or cost sharing.
- 43.25 Program income.
- 43.26 Non-Federal audit.

Changes, Property, and Subawards

- 43.30 Changes.
- 43.31 Real property.
- 43.32 Equipment.
- 43.33 Supplies.
- 43.34 Copyrights.
- 43.35 Subawards to debarred and suspended parties.
- 43.36 Procurement.
- 43.37 Subgrants.

Reports, Records Retention, and Enforcement

- 43.40 Monitoring and reporting program performance.
- 43.41 Financial reporting.
- 43.42 Retention and access requirements for records.
- 43.43 Enforcement.
- 43.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 43.50 Closeout.
- 43.51 Later disallowances and adjustments.
- 43.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 38 U.S.C. 210, 38 U.S.C. 612, E.O. 11541.

Newly added Part 43 is further amended by adding paragraph § 43.4(a)(10) to read as follows:

§ 43.4 Applicability.

(a) * * *

(10) Payments to States at per diem rates for veterans receiving care in recognized State homes.

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 30, 31, and 33**

[FRL 3320-9]

FOR FURTHER INFORMATION CONTACT:

Richard Mitchell, Grants Policy and Procedures Branch (PM-216F), United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-5297 (This is not a toll free number.)

ADDITIONAL SUPPLEMENTARY

INFORMATION: On March 12, 1987, President Reagan directed all Federal assistance awarding agencies to publish for State and local government grantees "common regulations that adopt the government-wide terms and conditions *verbatim* (emphasis added), except where there are inconsistent statutory requirements." The President's directive calls for promulgation of the final rule on March 11, 1988. To that end, Federal Agencies are jointly publishing a common rule to establish consistency and uniformity among all Federal assistance awarding agencies in the administration of grants and cooperative agreements to State, local, and federally recognized Indian tribal governments. The common rule, as part of the President's regulatory relief program, is further designed to reduce the burden of regulation and paperwork for the Environmental Protection Agency's (EPA) grantees. When effective (on October 1, 1988), this rule will become 40 CFR Part 31 and will supersede certain of EPA's general assistance regulations at 40 CFR Parts 30 and 33.

In the *Federal Register* of June 9, 1987, EPA, along with other agencies, published its proposed agency-specific preamble to the common rule. EPA's preamble discussed certain proposed additions to the rule and changes to the current 40 CFR Parts 30 and 33. These additions/changes will be applicable only to grants and cooperative agreements awarded by EPA. EPA requested that its readers comment on the proposed additions/changes. EPA received no comments specifically addressing our proposed additions/changes. The Office of Management and Budget (OMB), however, received a number of comments on the common rule itself. Those comments and their reconciliation are discussed in detail in the common preamble to the rule,

published in conjunction with this notice.

In the June 9, 1987, *Federal Register* EPA indicated that, after the effective date of the common rule, our general assistance regulation at 40 CFR Part 30 would consist of two Subparts: Subpart A, the common rule with EPA's additions; and Subpart B, the current Part 30 paragraphs applicable to grantees other than State and local governments. Subsequent to that publication, it was determined that such a format might be confusing. Therefore, EPA has decided to publish the common rule with EPA's additions at 40 CFR Part 31. Part 31 will be applicable to State, local and federally recognized Indian tribal governments. Part 30 will be revised so as to consist of those paragraphs which are applicable to grantees other than State and local governments.

Inasmuch as no negative comments were received on EPA's other proposed additions/changes as discussed in the June 9, 1987, *Federal Register*, they are being adopted.

Following is a summary of EPA's additions/changes:

The common rule with EPA's additions will become 40 CFR Part 31 and will be applicable to State, local and federally recognized Indian tribal governments. 40 CFR Part 30 will consist of those paragraphs of the current Part 30 which are applicable to grantees other than State and local governments.

The additions which are part of the common rule at Part 31 include:

(1) A list of the principal environmental statutory provisions applicable to EPA assistance programs. This list is at § 31.13.

(2) Buy American, 40 CFR 33.710 (required by section 215 of the Clean Water Act) is part of § 31.36 at subparagraph (c)(5) and applies only to the wastewater treatment construction grants program.

(3) Payments to Consultants, 40 CFR 33.280 (required by Pub. L. 99-591) is part of § 31.36 at subparagraph (j).

(4) Quality Assurance, 40 CFR 30.503. Many of EPA's grant awards involve the development and use of scientific and technical data. Reports, findings, data, etc., developed under such grants are used for a variety of purposes, each having a potential for wide-ranging environmental impacts. Because of the sensitive nature of these impacts, it is imperative that EPA's grantees develop a quality assurance program designed to ensure that the project will result in the highest quality scientific and technical data possible. This will be § 31.45.

(5) 40 CFR Part 30, Subpart L, "How are Disputes Between EPA Officials and

Me Resolved?" is 40 CFR Part 31, Subpart F: Disputes.

(6) 40 CFR Part 30, Appendix E—Part 30 Audit Requirements for State and Local Government Recipients, will become 40 CFR Part 31, Appendix A—Audit Requirements for State and Local Government Grantees.

EPA's Part 30 contains those sections of current 40 CFR Part 30 which will be applicable to grantees other than State and local governments (i.e., institutions of higher education, hospitals, or other nonprofit organizations). Listed below are those sections of the current 40 CFR Part 30 which are deleted. Those sections *not* listed will remain at 40 CFR Part 30 (for grantees other than State and local governments) and are renumbered as appropriate.

40 CFR	Reason for deletion/revision
§ 30.302(d) (2) and (3).	Application requirements for State and local governments only.
§ 30.501(a)(2).....	State and local requirement for submitting Financial Status Report (SF269).
§ 30.503 (e), (g), and (h).	State and local requirement for submitting a quality assurance plan.
§ 30.505(b)(2).....	Report submittal required only for construction grant projects.
§ 30.540(b) and Appendix E.	Requirements for audits of State and local governments only.

Publication of the common rule requires changes in our current regulation at 40 CFR Part 33, Procurement Under Assistance Agreements, to delete or revise certain sections which are applicable only to State and local governments and, therefore, are superseded by the common rule. Those remaining are applicable only to institutions of higher education, hospitals, and other nonprofit organizations. Listed below are those sections which EPA is deleting or revising:

40 CFR	Reason for Deletion
§ 33.110(e)(5).....	Delete this section because it is a procurement requirement related only to Superfund remedial action construction awards.
§ 30.210(f).....	Delete this section as it relates to formal advertising only for remedial action awards under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA).
§ 33, Subpart C.....	Delete this Subpart because it is applicable only to the wastewater treatment construction grant program.

40 CFR	Reason for Deletion
§ 33, Subpart E.....	Delete this Subpart because it is applicable only to remedial action awards under CERCLA and are not required for grantees other than State and local governments.
§ 33, Subpart F, § 33.1021 and § 33.1030, paragraphs 3, 4, 8, and 12.	Delete these provisions in Subpart F because they do not apply to institutions of higher education, hospitals, and other nonprofit organizations.

In the June 9, 1987, Notice of Proposed Rulemaking, EPA specifically requested its readers to comment on two additional matters being considered for inclusion in the common rule. These were:

(1) The current 40 CFR Part 30, Subpart I includes a provision for annulling assistance agreements if the grantee, without good cause, inordinately delayed or made no substantial progress on the project, obtained the award by fraud or misrepresentation, or practices corrupt administrative procedures. Annulment can result in recovery of all funds received for the project including those already expended.

(2) In the conduct of EPA's wastewater treatment construction grants program, grantees may be allowed to retain the services of the same architect or engineer during subsequent work on the project. This provision has been invaluable in this program as it helps ensure continuity through the life of a project since the architect or engineer is familiar with the project and it minimizes procurement actions for the grantee.

Since no negative comments were received, EPA is adding these provisions to EPA's version of the common rule. The information collection requirements for the application procedures in this rule were approved by OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* (OMB control number 2030-0020).

List of Subjects in 40 CFR Parts 30, 31, and 33

Accounting, Administrative practice and procedures, Grant programs, Grants Administration, Reporting and recordkeeping requirements

Title 40 of the Code of Federal Regulations is amended as set forth below.

Lee M. Thomas,
Administrator.

March 3, 1988.

1. Part 31 is added as set forth at the end of this document.

PART 31—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
31.1 Purpose and scope of this part.
31.2 Scope of subpart.
31.3 Definitions.
31.4 Applicability.
31.5 Effect on other issuances.
31.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 31.10 Forms for applying for grants.
31.11 State plans.
31.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 31.20 Standards for financial management systems.
31.21 Payment.
31.22 Allowable costs.
31.23 Period of availability of funds.
31.24 Matching or cost sharing.
31.25 Program income.
31.26 Non-Federal audit.

Changes, Property, and Subawards

- 31.30 Changes.
31.31 Real Property.
31.32 Equipment.
31.33 Supplies.
31.34 Copyrights.
31.35 Subawards to debarred and suspended parties.
31.36 Procurement.
31.37 Subgrants.

Reports, Record Retention, and Enforcement

- 31.40 Monitoring and reporting program performance.
31.41 Financial reporting.
31.42 Retention and access requirements for records.
31.43 Enforcement.
31.44 Termination for convenience.

Subpart D—After-The-Grant Requirements

- 31.50 Closeout.
31.51 Later disallowances and adjustments.
31.52 Collection of amounts due.

Subpart E—Entitlement [Reserved]

Subpart F—Disputes

- 31.70 Disputes.
Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1401 et seq.

2. Further amend Part 31 as follows:

- a. Amend § 31.6 by adding new paragraphs (c)(1) and (d) to read follows:

§ 31.6 Additions and exceptions.

- (c) * * *
(1) In the Environmental Protection Agency, the Director, Grants

Administration Division, is authorized to grant the exceptions.

(d) The EPA Director is also authorized to approve exceptions, on a class or an individual case basis, to EPA program—specific assistance regulations other than those which implement statutory and executive order requirements.

b. Add a new § 31.13 to Subpart B to read as follows:

§ 31.13 Principal environmental statutory provisions applicable to EPA assistance awards.

Grantees shall comply with all applicable Federal laws including:

(a) Section 306 of the Clean Air Act, (42 U.S.C. 7606).

(b) Section 508 of the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1368).

(c) Section 1424(e) of the Safe Drinking Water Act, (42 U.S.C. 300h-3(e)).

c. Amend § 31.36 by adding new paragraphs (c)(5), (j), and (k) to read as follows:

§ 31.36 Procurement.

(c) * * *
(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following "Buy American" requirements in paragraphs (c)(5)(i)-(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the

United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(j) *Payment to consultants.*

(1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS-18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Public Law 99-591)

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.*

(1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under § 31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in § 31.36.

d. Section 31.43 is amended by adding paragraph (a)(3)(i) to read as follows:

§ 31.43 Enforcement.

(a) * * *

(3) * * * (i) EPA can also wholly or partly annul the current award for the grantee's or subgrantee's program.

(e) Add a new § 31.45 to Subpart C to read as follows:

§ 31.45 Quality assurance.

If the grantee's project involves environmentally related measurements or data generation, the grantee shall develop and implement quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions.

f. Add a new 40 CFR Part 31, Subpart F, consisting of § 31.70 to read as follows:

Subpart F—Disputes

§ 31.70 Disputes.

(a) Disagreements should be resolved at the lowest level possible.

(b) If an agreement cannot be reached, the EPA disputes decision official will provide a written final decision. The EPA disputes decision official is the individual designated by the award official to resolve disputes concerning assistance agreements.

(c) The disputes decision official's decision will constitute final agency action unless a request for review is filed by registered mail, return receipt requested, within 30 calendar days of the date of the decision.

(1) For final decisions issued by an EPA disputes decision official at Headquarters, the request for review shall be filed with the Assistant Administrator responsible for the assistance program.

(2) For final decisions issued by a Regional disputes decision official, the request for review shall be filed with the Regional Administrator. If the Regional Administrator issued the final decision, the request for reconsideration shall be filed with the Regional Administrator.

(d) The request shall include:

(1) A copy of the EPA disputes decision official's final decision;

(2) A statement of the amount in dispute;

(3) A description of the issues involved; and

(4) A concise statement of the objections to the final decision.

(e) The disputant(s) may be represented by counsel and may submit documentary evidence and briefs for inclusion in a written record.

(f) Disputants are entitled to an informal conference with EPA officials.

(g) Disputants are entitled to a written decision from the appropriate Regional or Assistant Administrator.

(h) A decision by the Assistant Administrator to confirm the final decision of a Headquarters disputes decision official will constitute the final Agency action.

(i) A decision by the Regional Administrator to confirm the Regional disputes decision official's decision will constitute the final Agency action. However, a petition for discretionary review by the Assistant Administrator responsible for the assistance program may be filed within 30 calendar days of the Regional Administrator's decision. The petition shall be sent to the Assistant Administrator by registered mail, return receipt requested, and shall include:

(1) A copy of the Regional Administrator's decision; and

(2) A concise statement of the objections to the decision.

(j) If the Assistant Administrator decides not to review the Regional Administrator's decision, the Assistant Administrator will advise the disputant(s) in writing that the Regional Administrator's decision remains the final Agency action.

(k) If the Assistant Administrator decides to review the Regional Administrator's decision, the review will generally be limited to the written record on which the Regional Administrator's decision was based. The Assistant Administrator may allow the disputant(s) to submit briefs in support of the petition for review and

may provide an opportunity for an informal conference in order to clarify technical or legal issues. After reviewing the Regional Administrator's decision, the Assistant Administrator will issue a written decision which will then become the final Agency action.

(l) Reviews may not be requested of:

- (1) Decisions on requests for exceptions under § 31.6;
- (2) Bid protest decisions under § 31.36(b)(12);
- (3) National Environmental Policy Act decisions under Part 6;
- (4) Advanced wastewater treatment decisions of the Administrator; and
- (5) Policy decisions of the EPA Audit Resolution Board.

PART 30—GENERAL REGULATION FOR ASSISTANCE PROGRAMS FOR OTHER THAN STATE AND LOCAL GOVERNMENTS

3. Amend Part 30 by revising the title to read as set forth above; the authority citation continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 42 U.S.C. 7401 et seq.; 42 U.S.C. 6901 et seq.; 42 U.S.C. 300f et seq.; 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 42 U.S.C. 9601 et seq.

4. Further amend Part 30 as follows:

§ 30.302 [Amended]

a. Amend § 30.302 by removing paragraphs (d) (2) and (3).

§ 30.501 [Amended]

b. Amend § 30.501 by removing paragraph (a)(2) and redesignating (a)(3) as (a)(2).

§ 30.503 [Amended]

c. Amend § 30.503 by removing paragraphs (e), (g) and (h) and redesignating (f) as (e).

§ 30.505 [Amended]

d. Amend § 30.505 by removing paragraph (b)(2) and redesignating (b)(3) as (b)(2).

§ 30.540 [Amended]

e. Amend § 30.540 by removing paragraph (b) and redesignating (c) as (b).

Appendix E—Redesignated as Appendix A to Part 31

f. Appendix E is redesignated as Appendix A to Part 31.

PART 33—PROCUREMENT UNDER ASSISTANCE AGREEMENTS

5. Amend Part 33 as follows:

a. The authority citation for Part 33 continues to read as follows:

Authority: 7 U.S.C. 135 et seq.; 15 U.S.C. 2601 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 241, 242b, 243, 246, 300j-1, 300j-2, 300j-3, 1857 et seq., 6901 et seq.; and 42 U.S.C. 9601 et seq.

§ 33.110 [Amended]

b. Amend § 33.110 by removing paragraph (e)(5) and redesignating (e)(6) as (e)(5).

§ 33.210 [Amended]

c. Amend § 33.210 by removing paragraph (f) and redesignating (g) and (h) as (f) and (g) respectively.

Subparts C and E—[Removed and Reserved]

d. Subparts C and E are removed and reserved.

§ 33.1021 [Removed and Reserved]

e. § 33.1021 is removed and reserved.

§ 33.1030 [Amended]

f. Amend § 33.1030 by removing clauses 3, 4, 8, and 12 and redesignating 5 as 3, 6 as 4, 7 as 5, 9 as 6, 10 as 7, 11 as 8, 13 as 9, and 14 as 10.

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

43 CFR Part 12

FOR FURTHER INFORMATION CONTACT:

Colonel C. Armstrong, Deputy Director, Office of Acquisition and Property Management, Room 5512, Department of the Interior, Washington, DC 20240. Phone: 202-343-6431.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Rescissions

Provisions of Department of the Interior regulations listed at 43 CFR 12.2(b) which are inconsistent with the common rule are hereby rescinded. 43 CFR 12.3(b) has been revised accordingly.

Comments on the Proposed Rule

Comments received by the Department of the Interior were reproduced and exchanged among all of the agencies and used to prepare this final rule.

One commentor suggested that all statutes applicable to Indian tribal governments be listed as exceptions to the common rule because of the unique status of tribal governments. Since § 12.44 (§ ____4) provides a preference for Federal statutes which are inconsistent with the provisions of the common rule, no change has been made.

Another comment recommended that § 12.72(b) (§ ____32(b)) be changed to allow equipment acquired by tribal

governments under grants to be used, managed and disposed of in accordance with tribal laws and procedures. This recommendation cannot be adopted since local governments and Indian tribal governments will administer direct grants according to the requirements of the common rule (i.e., paragraphs (c) through (e) of § 12.45 (§ ____32)). "Pass-through" funds subgranted by a State to an Indian tribal government are administered according to State laws and procedures.

This rule is effective for grants and cooperative agreements awarded on or after October 1, 1988, the start of the next Federal fiscal year.

List of Subjects in 43 CFR Part 12

Cooperative agreements, Grants administration, Grant program, Indians.

Title 43, Part 12, of the Code of Federal Regulations is amended as set forth below.

Rick Ventura,

Assistant Secretary-Policy, Budget and Administration.

Date: February 1, 1988.

PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 98-502; OMB Circular A-102; OMB Circular A-110; OMB Circular A-128.

Subpart A—Administrative Requirements and Cost Principles

2. Subpart A is amended as set forth below.

a. Section 12.2 (b)(1) is amended by adding an additional sentence to the end of the paragraph to read as follows:

§ 12.2 Policy.

(b)(1) * * * Departmental regulations implementing Circular A-102 are contained in Subpart C, 43 CFR Part 12.

b. Section 12.3 (b) is amended by revising "All" to read "all" and inserting the following words at the beginning of the sentence to read as follows:

§ 12.3 Effect on prior issuances.

(b) Except to the extent inconsistent with the regulations in 43 CFR Part 12, Subpart C, * * *

3. Subpart C is added to read as set forth at the end of this document.

Subpart C—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

General

Sec.

- 12.41 (____1) Purpose and scope of this part.
12.42 (____2) Scope of subpart.
12.43 (____3) Definitions.
12.44 (____4) Applicability.
12.45 (____5) Effect on other issuances.
12.46 (____6) Additions and exceptions

Pre-Award Requirements

- 12.50 (____10) Forms for applying for grants.
12.51 (____11) State plans.
12.52 (____12) Special grant or subgrant conditions for "high-risk" grantees.

Post-Award Requirements

Financial Administration

- 12.60 (____20) Standards for financial management systems.
12.61 (____21) Payment.
12.62 (____22) Allowable costs.
12.63 (____23) Period of availability of funds.
12.64 (____24) Matching or cost sharing.
12.65 (____25) Program income.
12.66 (____26) Non-Federal audit.

Changes, Property, and Subawards

- 12.70 (____30) Changes.
12.71 (____31) Real Property
12.72 (____32) Equipment
12.73 (____33) Supplies.
12.74 (____34) Copyrights
12.75 (____35) Subawards to debarred and suspended parties.
12.76 (____36) Procurement.
12.77 (____37) Subgrants.

Reports, Records Retention, and Enforcement

- 12.80 (____40) Monitoring and reporting program performance.
12.81 (____41) Financial reporting.
12.82 (____42) Retention and access requirements for records.
12.83 (____43) Enforcement.
12.84 (____44) Termination for convenience

After the Grant Requirements

- 12.90 (____50) Closeout.
12.91 (____51) Later disallowances and adjustments.
12.92 (____52) Collection of amounts due.

Entitlements [Reserved]

BILLING CODE 4310-RF-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 13

FOR FURTHER INFORMATION CONTACT:

Arthur E. Curry, Office of the

Comptroller Policy Division (202) 646-3717.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Federal Emergency Management Agency intends to incorporate the proposed rule as Part 13 of Title 44 of the Code of Federal Regulations.

Though the agency has never issued formal Assistance Standards in the Code of Federal Regulations, it did issue guidance for its recipients in FEMA's issuance of Financial Assistance Guidelines, CPG 1-32. These guidelines were issued to all of our assistance programs with the exception of the Disaster Assistance Program for the reasons cited:

As a general comment, the proposed revision to OMB Circular A-102 may work well for most Federal assistance grant programs under which pre-determined amounts of Federal funds from annual appropriations are made available to grantees with expenditures governed by OMB's applicable administrative standards and cost-principles. By contrast, FEMA's Disaster Relief Assistance Program immediately follows unanticipated major disasters and consists of open-ended reimbursement-type grants made from no-year appropriations to large numbers of disasters affected communities, many of which are very small and do not have approved indirect cost agreements.

It is difficult to assess the full impact of the final common rule on FEMA's administration of the disaster relief program, and the public assistance program in particular, without further indepth review. Some of the significant impacts contained in the draft final rule include:

- An effective date of October 1, 1988, (or earlier) for grants awarded after that date or an earlier date. This could result in major disasters declared prior to October 1, 1988, with some grants awarded before and some awarded after the effective date.
- The supersession of program regulations and handbooks not in compliance (Subpart A, Section 5, page 8). Presumably, grants awarded prior to October 1, 1988, would be governed by the existing regulations and handbooks.
- The possible requirement for State plans for major disasters declared after October 1, 1988 (Subpart B, Section 1), page 10). This would also imply that a State Plan would be required for grants awarded subsequent to October 1, 1988, on previously declared major disasters.
- The application of Allowable Costs in OMB Circular A-87 to State and local

governments for grants awarded subsequent to October 1, 1988 (Subpart C, Section 22, page 13). Also, it would require the use of OMB Circular A-21 and A-122 for grants made to private nonprofit organizations and educational institutions after October 1, 1988.

—The application of the value of third-party in-kind contributions to meet FEMA cost sharing requirements on grants awarded subsequently to October 1, 1988 (Subpart C, Section 24, page 14). Although such records must be verifiable, this provision will weaken the existing cost-sharing requirement for disaster relief assistance.

—The requirement that State grantees and subgrantees develop and utilize comprehensive procurement policies and procedures, including a contract administration system (Subpart C, Section 36, page 24).

FEMA will submit a formal request to exempt the Disaster Assistance Program prior to October 1, 1988.

In the future, we may amend Part 13 of Title 44 as future needs dictate.

List of Subjects in 44 CFR Part 13

Accounting, Administrative practice and procedure, Grant programs—civil defense, disaster, hazardous materials and fire training, Grants Administration, Insurance, Reporting and recordkeeping requirements.

It is proposed that Title 44 of the Code of Federal Regulations be amended by adding Part 13 as set forth at the end of this document.

Arthur E. Curry,
Chief, Policy Division.

PART 13—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 13.1 Purpose and scope of this part.
 - 13.2 Scope of subpart.
 - 13.3 Definitions.
 - 13.4 Applicability.
 - 13.5 Effect on other issuances.
 - 13.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 13.10 Forms for applying for grants.
- 13.11 State plans.
- 13.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 13.20 Standards for financial management systems.
- 13.21 Payment.

- 13.22 Allowable costs.
- 13.23 Period of availability of funds.
- 13.24 Matching or cost sharing.
- 13.25 Program income.
- 13.26 Non-Federal audit.

Changes, Property, and Subawards

- 13.30 Changes.
- 13.31 Real property.
- 13.32 Equipment.
- 13.33 Supplies.
- 13.34 Copyrights.
- 13.35 Subawards to debarred and suspended parties.
- 13.36 Procurement.
- 13.37 Subgrants.

Reports, Records Retention, and Enforcement

- 13.40 Monitoring and reporting program performance.
- 13.41 Financial reporting.
- 13.42 Retention and access requirements for records.
- 13.43 Enforcement.
- 13.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 13.50 Closeout.
- 13.51 Later Disallowances and adjustments.
- 13.52 Collection of amounts due.

Subpart E—Entitlements (Reserved)

Authority: Reorg. Plan No. 3 1978, EO 12127; EO 12148.

BILLING CODE 6718-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

FOR FURTHER INFORMATION CONTACT: Mr. Gary Houseknecht, Acting Director, Division of Assistance and Cost Policy, Department of Health and Human Services, Room 513-D, 200 Independence Avenue SW., Washington, DC 20201. Telephone (202) 245-7565.

ADDITIONAL SUPPLEMENTARY

INFORMATION: Currently, the administration of most HHS grants, including grants to State and local governments, is governed by 45 CFR Part 74, which contains the HHS implementation of OMB Circulars A-102 and A-110, plus HHS grant rules which do not derive from OMB circulars.

With the adoption of 45 CFR Part 92, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as a final rule, (effective on October 1, 1988), 45 CFR Part 74 for the most part will no longer be applicable to the grants covered by Part 92. However, Part 74 will continue to apply to grants to nongovernmental recipients—institutions of higher education,

hospitals, other nonprofit organizations and for-profit concerns. Also, Part 74, in its entirety, would continue to govern HHS's grants to States under open-ended entitlement programs under the Social Security Act, as set forth in § 92.4(a)(3).

In addition, there are a number of provisions affecting governmental grantees that are now in 45 CFR Part 74, but not in 45 CFR Part 92, which we believe should remain in effect for grants to governments even after Part 92 is in effect. Therefore with the adoption of 45 CFR Part 92 (effective October 1, 1988) it is necessary to preserve the applicability of certain longstanding HHS Rules to grants which will be subject to Part 92. We described this plan in the Part 92 Notice of Proposed Rulemaking, on June 9, 1987 (52 FR 21820 and 21839), and gave examples of the rules which would be preserved. At that time we planned to issue a separate Notice of Proposed Rulemaking on the subject. However that step has proved unnecessary because no new rules are being adopted.

The Part 74 provisions which will continue to apply to grants under Part 92 are:

1. Section 74.62(a) which simplifies submission of audit reports;
2. Section 74.173 which specifies cost principles for hospitals;
3. Section 74.174(b) which establishes certain special cost rules for nonprofit organizations;
4. Section 74.304 which describes grantee responsibilities regarding final decisions in disputes; and
5. Sections 74.710 and 74.715 which apply special conditions to grants and subgrants to for-profit organizations.

Additionally, § 74.62(a) is being amended to update its internal reference to the previous version of OMB Circular A-102, which continues to apply to prior periods.

Finally, two other Part 74 policies are being retained, and incorporated in Part 92 itself. We are adding the following provisions to Part 92 to reflect these two policies:

1. Section 92.30(a) which specifies the HHS officials who may approve project changes. (See § 74.102(a).); and
2. Section 92.30(d)(5) which requires prior approval for research patient care. (See § 74.103(d)(3).)

Grantees should also note that 45 CFR Part 92 will not apply to block grant programs covered by 45 CFR Part 96.

List of Subjects in 45 CFR Parts 74 and 92

Accounting, Administrative practice and procedures, Grant programs—health; Grant programs—social

programs, Grant administration, Reporting and recordkeeping requirements.

Accordingly Title 45 of the Code of Federal Regulations is amended as set forth below.

Dated: February 1, 1988.

Otis R. Bowen,

Secretary of Health and Human Services.

1. Part 92 is added as set forth at the end of this document.

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 92.1 Purpose and scope of this part.
- 92.2 Scope of subpart.
- 92.3 Definitions.
- 92.4 Applicability.
- 92.5 Effect on other issuances.
- 92.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 92.10 Forms for applying for grants.
- 92.11 State plans.
- 92.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 92.20 Standards for financial management systems.
- 92.21 Payment.
- 92.22 Allowable costs.
- 92.23 Period of availability of funds.
- 92.24 Matching or cost sharing.
- 92.25 Program income.
- 92.26 Non-Federal audit.

Changes, Property, and Subawards

- 92.30 Changes.
- 92.31 Real property.
- 92.32 Equipment.
- 92.33 Supplies.
- 92.34 Copyrights.
- 92.35 Subawards to debarred and suspended parties.
- 92.36 Procurement.
- 92.37 Subgrants.

Reports, Records Retention, and Enforcement

- 92.40 Monitoring and reporting program performance.
- 92.41 Financial reporting.
- 92.42 Retention and access requirements for records.
- 92.43 Enforcement.
- 92.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 92.50 Closeout.
- 92.51 Later disallowances and adjustments.
- 92.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 5 U.S.C. 301.

2. New Part 92 is amended as follows:

a. Section 92.30 is amended by adding paragraphs (a)(1) and (d)(5) to read as follows:

§ 92.30 Changes.

(a) * * * (1) Approvals shall not be valid unless they are in writing, and signed by at least one of the following officials of the Department of Health and Human Services (HHS):

(i) The responsible Grants Officer or his or her designee;

(ii) The head of the HHS Operating or Staff Division that awarded the grant; or

(iii) The head of the Regional Office of the HHS Operating or Staff Division that awarded the grant.

* * * * *

(d) *Programmatic changes* * * *

(5) Providing medical care to individuals under research grants.

* * * * *

PART 74—ADMINISTRATION OF GRANTS

3. Part 74 is amended as follows:

a. The authority citation for Part 74 continues to read:

Authority: 5 U.S.C. 301; § 74.62(a) and Appendix J also issued under sec. 7505 Pub. L. 98-502, 98 Stat. 2333 (31 U.S.C. 7505).

b. Section 74.4 is amended by designating the text following "General." in paragraph (a) as paragraph (a)(1) and by adding a new paragraph (a)(2) to read as follows:

§ 74.4 Applicability of this part.

(a) *General.* * * *

(2) For grants which are subject to 45 CFR Part 92, only the following provisions of this part apply:

- (i) Section 74.62(a);
- (ii) Section 74.173;
- (iii) Section 74.174(b);
- (iv) Section 74.304;
- (v) Section 74.710; and
- (vi) Section 74.715.

* * * * *

c. Section 74.62 is amended by revising paragraph (a)(1) to read as follows:

§ 74.62 Non-Federal audits.

(a) *Governmental recipients*—(1) *Fiscal periods of recipients beginning before January 1, 1985.* Recipients that are governments shall comply with the requirements concerning non-Federal audits in Attachment P to OMB Circular A-102 (October 1979).¹

* * * * *

BILLING CODE 5150-04-M

NATIONAL SCIENCE FOUNDATION**45 CFR Part 602**

FOR FURTHER INFORMATION CONTACT: Sharon Graham, Policy Office, Division of Grants and Contracts, telephone (202) 357-7880.

ADDITIONAL SUPPLEMENTARY

INFORMATION: Because the National Science Foundation (NSF) does not differentiate in its administrative practices among types of organizations, and because State and local governments make up less than 30 of its 1500 grantees, NSF expects all prospective and existing grantees to continue following the policies and procedures found in NSF's publications and forms which have received OMB clearance. These policies and procedures, which are consistent with or less restrictive than the common rule, are found in: "Grants for Research and Education in Science and Engineering" which outlines the procedures for applying for NSF grants, and contains the necessary cover page, forms and format for submitting a proposal; NSF F.L. 200, "Grant General Conditions," which contains the terms and conditions which are usually applicable to NSF grants; and "NSF Grant Policy Manual" which outlines NSF's grant administration provisions. Where existing requirements appear inconsistent with the common rule, grantees should consult with NSF.

List of Subjects in 45 CFR Part 602

Accounting, Administration practice and procedures, Grant administration, Grant programs—education, Grant programs—science and technology, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 602 as set forth at the end of this document.

Jeff Fenstermacher,
Assistant Director for Administration.

PART 602—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General**Sec.**

- 602.1 Purpose and scope of this part.
- 602.2 Scope of subpart.
- 602.3 Definitions.
- 602.4 Applicability.
- 602.5 Effect of other issuances.
- 602.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 602.10 Forms for applying for grants.
- 602.11 State plans.
- 602.12 Special grant or subgrant conditions for "high risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 602.20 Standard for financial management systems.
- 602.21 Payment.
- 602.22 Allowable costs.
- 602.23 Period of availability of funds.
- 602.24 Matching or cost sharing.
- 602.25 Program income.
- 602.26 Non-Federal audit.

Changes, Property, and Subawards

- 602.30 Changes.
- 602.31 Real property.
- 602.32 Equipment.
- 602.33 Supplies.
- 602.34 Copyrights.
- 602.35 Subawards to debarred and suspended parties.
- 602.36 Procurements.
- 602.37 Subgrants.

Reports, Records Retention, and Enforcement

- 602.40 Monitoring and reporting program performance.
- 602.41 Financial reporting.
- 602.42 Retention and access requirements for records.
- 602.43 Enforcement.
- 602.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 602.50 Closeout.
- 602.51 Later disallowances and adjustments.
- 602.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 42 U.S.C. 1870(a).
BILLING CODE 7555-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**National Endowment for the Arts****45 CFR Part 1157****FOR FURTHER INFORMATION CONTACT:**

Arthur Warren, Deputy General Counsel, or Laurence Baden, Grants Officer, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682-5403.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The National Endowment for the Arts (hereinafter "Arts Endowment") received three comments concerning the notice of proposed rulemaking regarding Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments published in the **Federal Register** on June 9, 1987. Two comments addressed state plans requirements; one of these specifically noted the legislative override of § ____11

discussed in the Arts Endowment's agency specific preamble. The third comment was unrelated to matters addressed in the Arts Endowment's agency specific preamble. These comments were shared with all agencies participating in the common rulemaking and considered in preparing the final rule. The exceptions described by the National Endowment for the Arts in its preamble in the June 9, 1987, **Federal Register** publication of the notice of proposed rulemaking remain.

Legislative Overrides

1. Section ____4 makes the final common rule applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common rule has been determined to be inconsistent with the Challenge Program of the National Endowment for the Arts [20 U.S.C. 954(1)]. In creating the Challenge Program, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for arts institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The Challenge Program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. In meeting its mandate, the Challenge Program is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, §§ ____10, ____41 and certain portions of § ____22 of the common rule are not applicable to grant funds awarded pursuant to subsection 5(1) of the National Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 954(1)] unless otherwise provided in the grant agreement. Congress intended Challenge grants to assist arts organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grant applications must supply specifically tailored financial and programmatic data to the agency to allow the agency to review applications in a manner consistent with the statutory purpose of the program. Challenge grantees are subject to the applicable cost principles except where provided otherwise by the NFAH Act (e.g., endowment, cash reserve, fundraising, notes payable, deficit elimination, and capital funds).

Finally, grantees must maintain and report financial data beyond that required by standard forms to demonstrate achievement of matching and other program requirements.

2. Section ____11 of the final common rule allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. Pursuant to subsection 5(g)(2) of the NFAH Act [20 U.S.C. 954(g)(2)], state applicants are required to submit a specifically described state plan in order to receive basic state operating grant assistance. Because this Agency's authorizing legislation specifies certain information and assurances which must be included in this state plan, it would not be legally permissible to substitute a different state plan for this purpose, or to simplify the state plan requirements. Given timing requirements, it would be impractical to consolidate these plans with other state plans. Also, Congress has directed, at 20 U.S.C. 954(m), that information gathered through these plans be used to provide biennial reports to Congress on the state of the arts. These legal mandates were not considered by the comment received on this.

In addition, it should be noted that for the purposes of section ____10 of the final common rule, the Arts Endowment considers the basic state grant program to be a "formula grant program" not subject to the application forms provision of § ____10 of the OMB common regulation. However, as a matter of policy, the Agency has determined to adopt the "Changes" provisions at § ____30 of the common regulation for these grants. Adoption of this provision would be consistent with the intent of Congress for the administration of this program as reflected in the statutory state plan requirements and in the statutory requirement [20 U.S.C. 954(g)(1)] that these funds be used only for projects and productions in the arts which meet certain statutory standards or goals.

3. Sections ____40(e) and ____41(a)(7) of the final common rule provide that grantor agencies may waive any performance or financial reports required by the common rule if they are needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Arts Endowment's authorizing legislation [20 U.S.C. 959(d)] require specific performance and financial reports. Because of the statutory requirements, the Arts Endowment is unable to waive the various provisions of the common rule

regarding the performance and financial reports.

Application Form

Also concerning section .10 of the final common rule, the agency specific preamble to the June 9, 1987 **Federal Register** publication requested public comment as to the impact of the use of the standard application forms with the Arts Endowment's existing application forms as supplements would have for state and local government applicants.

No comments were received as a result of the notice in the June 9 **Federal Register** and the Arts Endowment thus concluded that potential applicants concurred with the Endowment's existing practice. However, the Arts Endowment published an additional notice in the **Federal Register** (52 FR 42687-42688) on November 6, 1987 to provide the public with an additional opportunity to comment.

In response to this notice, the Endowment received two comments. The National Assembly of State Arts Agencies (NASAA), which represents the 56 states and jurisdictional arts agencies, concurred strongly with the Endowment's position: "We submit this public comment in support of the recommendation of the National Endowment for the Arts that applicants to a program use the application forms specifically developed for each program. It appears that the new OMB proposal to require a standard form for state and local governments would place an undue burden on state arts agency applicants." NASAA's comment also discussed the problems of comparability of information. It should be noted that NASAA represents organizations that receive state appropriations of over \$200 million annually in support of the arts.

The Endowment also received a comment from a public school district. It advised that units of state and local government should not be required to use forms developed for nonprofits, but those published in OMB Circular A-102. The comment did not address how to achieve comparability of information for application review if different forms were required. It should be noted that a public school system would be eligible for few categories of support within the programs designed for nonprofits. It should also be recognized that, according to our records, this commenter has not made an application to the Endowment during the past five years.

Upon consideration of these comments and based on the experience of the Agency, the Arts Endowment intends to continue its use of forms approved under the Paperwork

Reduction Act of 1980 for all applicants to programs oriented to nonprofits. This practice is consistent with § ____10(b) of the final common rule.

List of Subjects in 45 CFR Part 1157

Accounting, Administrative practice and procedures, Grant programs, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 1157 as set forth at the end of this document.

Peter J. Basso,

Deputy Chairman for Management.

PART 1157—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

- Sec.
- 1157.1 Purpose and scope of this part.
 - 1157.2 Scope of subpart.
 - 1157.3 Definitions.
 - 1157.4 Applicability.
 - 1157.5 Effect on other issuances.
 - 1157.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1157.10 Forms for applying for grants.
- 1157.11 State plans.
- 1157.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1157.20 Standards for financial management systems.
- 1157.21 Payment.
- 1157.22 Allowable costs.
- 1157.23 Period of availability of funds.
- 1157.24 Matching or cost sharing.
- 1157.25 Program income.
- 1157.26 Non-Federal audit.

Changes, Property, and Subawards

- 1157.30 Changes.
- 1157.31 Real property.
- 1157.32 Equipment.
- 1157.33 Supplies.
- 1157.34 Copyrights.
- 1157.35 Subawards to debarred and suspended parties.
- 1157.36 Procurement.
- 1157.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1157.40 Monitoring and reporting program performance.
- 1157.41 Financial reporting.
- 1157.42 Retention and access requirements for records.
- 1157.43 Enforcement.
- 1157.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1157.50 Closeout.
- 1157.51 Later disallowances and adjustments.

1157.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

BILLING CODE 7537-01-M

National Endowment for the Humanities

45 CFR Part 1174

FOR FURTHER INFORMATION CONTACT:

David Wallace, Grants Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0494.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The National Endowment for the Humanities received two comments during the comment period concerning the notice of proposed rulemaking published in the *Federal Register* on June 9, 1987, regarding Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. These comments were shared with all of the agencies and considered in preparing the final rule. The exceptions described by the National Endowment for the Humanities in its preamble in the June 9, 1987, publication in the *Federal Register* of the notice of proposed rulemaking remain.

Section ____4 makes the final common rule applicable to all grant programs except where the regulation is inconsistent with federal statutes or regulations. The common rule has been determined to be inconsistent with the challenge grant program of the National Endowment for the Humanities [20 U.S.C. 956(h)]. In creating challenge grants as a unique program of grants, Congress recognized the necessity of broadening the range and enlarging the number of sources of financial support for cultural institutions as well as increasing the levels of support, thus creating a more effective private-public sector partnership. The challenge grant program encourages grantees to improve and integrate their program, audience, and financial development planning to build new and continuing sources of support and a more stable pattern of future operations and growth. Thus the challenge grant program in meeting its mandate is unique in every phase of the grant process—the application, the grant purposes, the allowable use of grant funds, and the reporting requirements.

For the reasons stated above, certain portions of § ____22, "Allowable Costs," of the common rule are not applicable to challenge grant funds awarded pursuant to subsection 7(h) of the National

Foundation of the Arts and the Humanities Act of 1965, as amended (hereinafter "NFAH Act"), [20 U.S.C. 956(h)] unless otherwise provided in the grant agreement. Congress intended challenge grants to assist humanities organizations in obtaining nonfederal support and to improve their financial stability through long-range financial and program planning. Challenge grantees are subject to the applicable cost principles except when provided otherwise by the NFAH Act. For example, under the challenge grant program grantees may expend funds for endowments, cash reserves, reduction or deferral of debts, notes or mortgages, or fundraising.

Section ____11 allows states to "simplify, consolidate, and substitute plans" required to be submitted to federal agencies in order to receive federal assistance. However, subsection 7(f) of the NFAH Act, [20 U.S.C. 956(f)], provides that an applicant may apply for grant assistance either as a state humanities agency or, in the absence of a state agency application, as a private group within the state. Applicants, whether a state humanities agency or a private group, are required to submit a specific, statutorily described, state plan in order to receive basic grant assistance. Although thus far no state has chosen to create a state humanities agency to apply under this provision, were a state agency to apply, because the Humanities Endowment's authorizing legislation specifies certain information and assurances that must be included in the state plan, it would not be legally permissible for a state to substitute a different state plan for this purpose, or to simplify the state plan requirements. One comment stated that under Executive Order 12372 and the common rule states would still be required to meet federal statutory requirements in simplified and consolidated plans. The National Endowment for the Humanities agrees that were a state humanities agency formed and applied for funding it would be required to meet federal statutory requirements, but because of timing requirements, it would be impracticable to consolidate these plans with other state plans.

In the event a state chose to apply for a grant under the provisions under 20 U.S.C. 956(f), the Humanities Endowment would consider that application to be a "formula grant program" not subject to the application forms provision of section .10 of the common rule.

Sections ____40(e) and ____41(a)(7) provide that grantor agencies may waive any performance or financial

reports required by the common rule if they are not needed. Subsections 10(d)(1) and 10(d)(2)(A) of the Humanities Endowment's authorizing legislation [20 U.S.C. 959(d)] require performance and financial reports. Because of the statutory requirements, the Humanities Endowment would be unable to waive the various provisions of the common rule regarding the performance and financial reports.

In its preamble to the notice of proposed rulemaking, the National Endowment for the Humanities explained the reasons why it requests applicants to submit multiple copies of applications. The reasons are as follows. Applications are evaluated by the staff of the Humanities Endowment, its panels, its reviewers, and members of the National Council on the Humanities. To be able to insure that applications receive a thorough and objective review in the Endowment's comprehensive peer review process, the Endowment has traditionally requested applicants to submit multiple copies of an application. The Endowment administers purely voluntary, non-entitlement, grant programs, rather than legally mandated entitlement grant programs. Once any applicant voluntarily elects to apply to the Endowment for discretionary public funds, the applicant should properly bear the costs of applying, not the American taxpayer. No negative comments were received with respect to this matter. Therefore, the Endowment intends to continue to request multiple copies of applications.

Lists of Subjects in 45 CFR Part 1174

Accounting, Administration practice and procedures, Grant programs—National Endowment for the Humanities, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part 1174 as set forth at the end of this document.

Lynne V. Cheney,

Chairman, National Endowment for the Humanities.

PART 1174—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1174.1 Purpose and scope of this part.
- 1174.2 Scope of subpart.
- 1174.3 Definitions.
- 1174.4 Applicability.

Sec.

- 1174.5 Effect on other issuances.
1174.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1174.10 Forms for applying for grants.
1174.11 State plans.
1174.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 1174.20 Standards for financial management systems.
1174.21 Payment.
1174.22 Allowable costs.
1174.23 Period of availability of funds.
1174.24 Matching or cost sharing.
1174.25 Program income.
1174.26 Non-Federal audit.

Changes, Property and Subawards

- 1174.30 Changes.
1174.31 Real property.
1174.32 Equipment.
1174.33 Supplies.
1174.34 Copyrights.
1174.35 Subawards to debarred and suspended parties.
1174.36 Procurement.
1174.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1174.40 Monitoring and reporting program performance.
1174.41 Financial reporting.
1174.42 Retention and access requirements for records.
1174.43 Enforcement.
1174.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1174.50 Closeout.
1174.51 Later disallowances and adjustments.
1174.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 959(a)(1).

BILLING CODE 7536-01-M

Institute of Museum Services**45 CFR Part 1183****FOR FURTHER INFORMATION CONTACT:**

Rebecca Danvers, (202) 786-0539.

ADDITIONAL SUPPLEMENTARY

INFORMATION: The Institute of Museum Services, by notice in the *Federal Register* published on June 9, 1987, 52 FR 21842, proposed the inclusion in its regulations of a new Part 1183 that would incorporate the revised OMB Circular A-102 containing government-wide application and other requirements applicable to grants to State, Local and federally recognized Indian tribal governments. Public comments on the proposed common regulations were received and changes have been made in response to those comments. This document incorporates the common, uniform regulatory provisions reflecting

the revised circular, as changed in response to public comment. As revised, the uniform regulations will become a new Part 1183 of the IMS regulations. Except as otherwise provided by regulation, Part 1183 as set forth below will apply generally to applications by those applicants to the Institute of Museum Services for grants under general operating support and conservation project support programs, as well as to other forms of federal financial assistance provided by IMS.

For the most part these regulations should involve little change in the administration of IMS programs. The previous regulations indicated the applicability of A-102 principles to record keeping requirements and fiscal control and fund accounting procedures. However, inclusion of the text of the circular in comprehensive regulations may result in greater focus on those provisions in the administration and monitoring of IMS grants. Moreover, in a few areas, significant change may be encountered. IMS staff will seek to work with applicants and grantees in adjusting to this change. IMS believes that the changes made to § 1183.10, as explained in the explanation of the general purpose to public comments under "Subpart B—Pre-Award Requirements," adequately addresses concerns expressed by commenters regarding the effect of the new Part 1183 on application procedures. With respect to the use of application forms, IMS expects to proceed under the alternative procedures set forth in § 1183.10.

List of Subject in 45 CFR Part 1183

Accounting, Administrative practice and procedure, Grant programs—Museums, Grants Administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations be amended by adding Part 1183 as set forth at the end of this document.

Lois Burke Shepard,

Director.

PART 1183—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1183.1 Purpose and scope of this part.
1183.2 Scope of subpart.
1183.3 Definitions.
1183.4 Applicability.
1183.5 Effect on other issuances.
1183.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1183.10 Forms for applying for grants.
1183.11 State Plans.
1183.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements**Financial Administration**

- 1183.20 Standards for financial management systems.
1183.21 Payment.
1183.22 Allowable costs.
1183.23 Period of availability of funds.
1183.24 Matching or cost sharing.
1183.25 Program income.
1183.26 Non-Federal audits.

Changes, Property, and Subawards

- 1183.30 Changes.
1183.31 Real property.
1183.32 Equipment.
1183.33 Supplies.
1183.34 Copyrights.
1183.35 Subawards to debarred and suspended parties.
1183.36 Procurement.
1183.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1183.40 Monitoring and reporting program performance.
1183.41 Financial reporting.
1183.42 Retention and access requirements for records.
1183.43 Enforcement.
1183.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1183.50 Closeout.
1183.51 Later disallowances and adjustments.
1183.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 20 U.S.C. 961068.

BILLING CODE 7036-01-M

ACTION**45 CFR Part 1234****FOR FURTHER INFORMATION CONTACT:**

Margaret M. McHale, Acting Chief, Grants Branch, on (202) 634-9150.

ADDITIONAL SUPPLEMENTARY INFORMATION: None.**List of Subjects in 45 CFR Part 1234**

Accounting, Administrative practice and procedures, Grant programs—Volunteer services, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding Part

1234 as set forth at the end of this document.

Donna M. Alvarado,
Director.

PART 1234—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 1234.1 Purpose and scope of this part.
- 1234.2 Scope of subpart.
- 1234.3 Definitions.
- 1234.4 Applicability.
- 1234.5 Effect on other issuances.
- 1234.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 1234.10 Forms for applying for grants.
- 1234.11 State plans.
- 1234.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 1234.20 Standards for financial management systems.
- 1234.21 Payment.
- 1234.22 Allowable costs.
- 1234.23 Period of availability of funds.
- 1234.24 Matching or cost sharing.
- 1234.25 Program income.
- 1234.26 Non-Federal audit.

Changes, Property, and Subawards

- 1234.30 Changes.
- 1234.31 Real property.
- 1234.32 Equipment.
- 1234.33 Supplies.
- 1234.34 Copyrights.
- 1234.35 Subawards to debarred and suspended parties.
- 1234.36 Procurement.
- 1234.37 Subgrants.

Reports, Records Retention, and Enforcement

- 1234.40 Monitoring and reporting program performance.
- 1234.41 Financial reporting.
- 1234.42 Retention and access requirements for records.
- 1234.43 Enforcement.
- 1234.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 1234.50 Closeout.
- 1234.51 Later disallowances and adjustments.
- 1234.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 93-113; 42 U.S.C. 4951, et seq.; 42 U.S.C. 5060.

BILLING CODE 6050-28-M

COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

45 CFR Part 2015

FOR FURTHER INFORMATION CONTACT:

Kemp Harshman, Associate General Counsel, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place NW., Washington, DC 20503, (202) 653-7451.

List of Subjects in 45 CFR Part 2015

Accounting, Administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding a new Part 2015 as set forth at the end of this document.

Mark W. Cannon,
Staff Director.

PART 2015—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 2015.1 Purpose and scope of this part.
- 2015.2 Scope of subpart.
- 2015.3 Definitions.
- 2015.4 Applicability.
- 2015.5 Effect on other issuances.
- 2015.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 2015.10 Forms for applying for grants.
- 2015.11 State plans.
- 2015.12 Special grant or subgrant conditions for "high-risk" grantees.

Subpart C—Post-Award Requirements

Financial Administration

- 2015.20 Standards for financial management systems.
- 2015.21 Payment.
- 2015.22 Allowable costs.
- 2015.23 Period of availability of funds.
- 2015.24 Matching or cost sharing.
- 2015.25 Program income.
- 2015.26 Non-Federal audit.

Changes, Property, and Subawards

- 2015.30 Changes.
- 2015.31 Real property.
- 2015.32 Equipment.
- 2015.33 Supplies.
- 2015.34 Copyrights.
- 2015.35 Subawards to debarred and suspended parties.
- 2015.36 Procurement.
- 2015.37 Subgrants.

Reports, Records Retention, and Enforcement

- 2015.40 Monitoring and reporting program performance.
- 2015.41 Financial reporting.

- 2015.42 Retention and access requirements for records.
- 2015.43 Enforcement.
- 2015.44 Termination for convenience.

Subpart D—After-the-Grant Requirements

- 2015.50 Closeout.
- 2015.51 Later disallowances and adjustments.
- 2015.52 Collections of amounts due.

Subpart E—Entitlements [Reserved]

Authority: Pub. L. 98-101 as amended and Pub. L. 99-194 as amended.

BILLING CODE 6340-01-M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

49 CFR Part 18

[Docket 44910]

EFFECTIVE DATE: This rule is effective October 1, 1988, except for the \$5,000 threshold for the definition of "equipment" in § 18.3, the \$5,000 threshold for disposition of equipment in § 18.32(e), and the \$25,000 threshold for the use of small purchase procedures in § 18.36(d)(1), which are effective March 12, 1988. For a discussion of implementation, see the additional supplementary information below.

FOR FURTHER INFORMATION CONTACT: Charles E. Ventura, Department of Transportation, Office of Acquisition and Grant Management—M-63, 400 Seventh Street SW., Room 9100, Washington, DC 20590, (202) 366-4286.

ADDITIONAL SUPPLEMENTARY INFORMATION:

Background

Most significant changes are noted in the common preamble. The Department of Transportation has chosen to implement the higher thresholds for the definition and disposition of equipment, and for the use of small purchase procedures, on the date the regulation is issued. The revised threshold for equipment also applies to equipment owned by grantees that had been acquired with grants that are currently active or have been closed. The Department views these changes as beneficial to the efficient operation of our grant programs and a significant step in reducing the red tape associated with grant administrative requirements.

The "Federalism" provisions of §§ 18.20(a), 18.32(b), 18.36(a), and 18.37(a) that allow States to use their own procedures for financial management, equipment, procurement management, and managing subgrants are extended to all grants active on

October 1, 1988. Because many of our programs fund projects that will cross over the October 1, 1988 implementation date, the Department has chosen to extend the Federalism provisions to grants active as of October 1, 1988. This will allow our State grantees to use the same provisions for current grants as they will use for new grants. This authority does not apply if the awarding agency specifically withholds the authority from a grantee.

The payment requirements of § 18.21(g)(3) do not allow payments to grantees for amounts withheld from payments to contractors to assure satisfactory completion of work. We define payments to contractors to include amounts paid to escrow accounts which can be withdrawn by the contractor upon satisfactory completion of work. The rule has been changed to note that payments to escrow accounts are allowable costs.

The disposition requirements for equipment in § 18.32(e)(3) allow the awarding agency to direct a grantee or subgrantee to take appropriate excess and disposition actions if the grantee or subgrantee fails to take such actions. Section 18.31(c) does not contain an identical provision for real property; however, the policy of the Department of Transportation is that grantees or subgrantees who do not take appropriate disposition actions for real property can be directed by the awarding agency to take such actions.

Section 18.36(b)(7) encourages grantees to use value engineering clauses in contracts for construction projects. The intent of this subsection is to ensure that the essential function is provided at the lowest life-cycle cost. In this regard, design contracts, as well as, construction contracts are possible candidates for value engineering clauses.

The Federal Highway Administration (FHWA) had proposed requiring its own application forms and procedures. The FHWA had been exempted from the application requirements of OMB Circular A-102, and FHWA application forms and procedures have been approved by OMB. The common rule has been revised to allow Federal agencies to use their own forms and procedures provided they have been approved by OMB. This change eliminates the need for a deviation. However, the rule has been amended to highlight the payment procedures that are used for FHWA programs.

Deviations

Because of existing statutory requirements which do not conform with the provisions of the common regulation,

or due to special efforts to reduce Federal red tape, the Department will not comply with some of the sections of the common rule. The deviations not required by statute received no negative comments, and these deviations have been approved by the Office of Management and Budget (OMB). A new airport State Block Grant Pilot Program was authorized in section 534 of the Airport and Airway Improvement Act of 1982, as amended. The Federal Aviation Administration has requested an exemption from the requirements of this rule for this program, although no specific program regulations have been developed. A formal request for exemption will be made when regulations for the program are developed.

Additional statutory deviations, such as one required by the recently passed aviation legislation, and the non-statutory deviations approved by OMB are listed below.

Section____.21, Payment. Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

Section____.36, Procurement. 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

Section____.36, Procurement. 23 U.S.C. 112(d) requires concurrence by the Secretary before highway construction contracts can be awarded. One comment was received that this provision does not apply for projects approved under certification acceptance or the Secondary Road Plan. Subsection 18.36(q) has been revised to note this exception.

Section____.36, Procurement. The requirement for the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures in § 18.36(t) has been revised to highlight that subgrantees as well as grantees are covered by this requirement. Grantees or subgrantees must either use qualifications-based procedures, use equivalent State procedures, or choose to establish a formal procurement procedure by State statute. A similar provision has also been added for the Airport Improvement Program in section 511 of the Airport and Airway Improvement Act of 1982, as amended. The Subsection has also been revised to note that this procedure can only be used in certain areas, specific areas will be noted in highway,

mass transportation, and airport directives.

Section____.41, Financial Reporting. FHWA will require State recipients to use FHWA or State financial reports as opposed to the standard forms referenced in the common rule.

Section____.41, Financial Reporting. The National Highway Traffic Safety Administration (NHTSA) will use existing State forms for financial reporting.

Impact Analyses

Executive Order 12291 and DOT Regulatory Policies and Procedures

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or certain other specified effects.

We intend the regulations to result in savings to State and local governments in the costs of administering grants. However, we do not believe that the regulations will have an annual economic effect of \$100 million or more or the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

This common rule restates, in regulatory form, most of the provisions of OMB Circular A-102 that had been implemented in our program regulations and directives. In addition, some of provisions of the regulation that were not in Circular A-102, or are different from Circular A-102, will reduce the red tape burden on our grantees. Because of this, we certify that this regulation is nonsignificant under the Department of Transportation's Regulatory Policies and Procedures.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on small entities.

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they do not affect the amount of funds provided in the covered programs, but rather modify and update administrative and procedural requirements.

Paperwork Reduction Act

The recordkeeping and information collection requirements included in these regulations were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1960 (44 U.S.C. 3504(h)), and were approved August 11, 1987. The OMB approval number is 2105-0520.

List of Subjects in 49 CFR Part 18

Accounting, Administrative practice and procedure, Grant programs, Grants Administration, Insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Title 49 of the Code of Federal Regulations, is amended as set forth below:

Issued this 3rd day of March, 1988 at Washington, D.C.

Jim Burnley,

Secretary of Transportation.

1. Part 18 is added as set forth at the end of this document.

PART 18—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

- 18.1 Purpose and scope of this part.
- 18.2 Scope of subpart.
- 18.3 Definitions.
- 18.4 Applicability.
- 18.5 Effect on other issuances.
- 18.6 Additions and exceptions.

Subpart B—Pre-Award Requirements

- 18.10 Forms for applying for grants.
- 18.11 State plans.
- 18.12 Special grant or subgrant conditions for "high risk" recipients.

Subpart C—Post-Award Requirements**Financial Administration**

- 18.20 Standards for financial management systems.
- 18.21 Payment.
- 18.22 Allowable costs.
- 18.23 Period of availability of funds.
- 18.24 Matching or cost sharing.
- 18.25 Program income.
- 18.26 Non-Federal audits.

Changes, Property, and Subawards

- 18.30 Changes.
- 18.31 Real property.
- 18.32 Equipment.
- 18.33 Supplies.
- 18.34 Copyrights.
- 18.35 Subawards to debarred and suspended parties.
- 18.36 Procurement.
- 18.37 Subgrants.

Reports, Records Retention, and Enforcement

- 18.40 Monitoring and reporting program performance.

Sec.

- 18.41 Financial reporting.
- 18.42 Retention and access requirements for records.
- 18.43 Enforcement.
- 18.44 Termination of convenience.

Subpart D—After-the-Grant Requirements

- 18.50 Closeout.
- 18.51 Later disallowances and adjustments.
- 18.52 Collection of amounts due.

Subpart E—Entitlements [Reserved]

Authority: 49 U.S.C. 322(a).

2. New Part 18 is further amended as follows:

a. Section 18.10 is amended by adding paragraph (a)(3) to read as follows:

§ 18.10 Forms for applying for grants.

(a) * * *

(3) Forms and procedures for Federal Highway Administration (FHWA) projects are contained in 23 CFR Part 630, Subpart B, 23 CFR Part 420, Subpart A, and 49 CFR Part 450.

b. Section 18.20 is amended by adding paragraph (d) to read as follows:

§ 18.20 Standards for financial management systems.

(d) Certain Urban Mass Transportation Administration (UMTA) grantees shall comply with the requirements of section 15 of the Urban Mass Transportation (UMT) Act of 1964, as amended, as implemented by 49 CFR Part 630, regarding a uniform system of accounts and records and a uniform reporting system for certain grantees.

c. Section 18.21 is amended by adding paragraphs (j) and (k) to read as follows:

§ 18.21 Payment.

(j) 23 U.S.C. 121 limits payments to States for highway construction projects to the Federal share of the costs of construction incurred to date, plus the Federal share of the value of stockpiled materials.

(k) Section 404 of the Surface Transportation Assistance Act of 1982 directs the Secretary to reimburse States for the Federal share of costs incurred.

d. Section 18.22 is amended by adding paragraphs (c), (d), and (e) to read as follows:

§ 18.22 Allowable costs.

(c) The overhead cost principles of OMB Circular A-87 shall not apply to State highway agencies for FHWA funded grants.

(d) Sections 3(1) and 9(p) of the UMT Act of 1964, as amended, authorize the Secretary to include in the net project cost eligible for Federal assistance, the amount of interest earned and payable

on bonds issued by the State or local public body to the extent that the proceeds of such bonds have actually been expended in carrying out such project or portion thereof. Limitations are established in Sections 3 and 9 of the UMT Act of 1964, as amended.

(e) Section 9 of the UMT Act of 1964, as amended, authorizes grants to finance the leasing of facilities and equipment for use in mass transportation services provided leasing is more cost effective than acquisition or construction.

e. Section 18.24 is amended by adding paragraphs (b)(8), (9), and (10) and (c)(3) to read as follows:

§ 18.24 Matching or cost sharing.

* * * * *

(b) * * *

(8) 23 U.S.C. 121(a) permits reimbursement for actual construction cost incurred by States for highway construction projects. Except for private donations of right-of-way, contributions and donations shall not be considered State costs, and shall not be allowable for matching purposes for highway construction contracts. 23 U.S.C. 323 permits private donations of right-of-way to be used for a State's matching share, and establishes procedures for determining the fair market value of such donated right-of-way.

(9) Section 4(a) of the UMT Act of 1964, as amended, provides that the Federal grant for any project to be assisted under section 3 of the UMT Act of 1964, as amended, shall be in an amount equal to 75 percent of the net project costs. Net project cost is defined as that portion of the cost of the project which cannot be reasonably financed from revenues.

(10) Section 18(e) of the UMT Act of 1964, as amended, limits the Federal share to 80 percent of the net cost of construction, as determined by the Secretary of Transportation. The Federal share for the payment of subsidies for operating expenses, as defined by the Secretary, shall not exceed 50 percent of the net cost of such operating expense projects.

(c) * * *

(3) Section 5(g) of the Department of Transportation Act (49 U.S.C. 1654(g)) limits in-kind service contributions under the local Rail Service Assistance Program to "the cash equivalent of State salaries for State public employees working in the State rail assistance program, but not including overhead and general administrative costs."

* * * * *

f. Section 18.25 is amended by adding paragraphs (g)(4), (5), (6), and (7) to read as follows:

§ 18.25 Program income.

(g) * * *
(4) Section 3(a)(1)(D) of the UMT Act of 1964, as amended, provides that the Secretary shall establish requirements for the use of income derived from appreciated land values for certain UMTA grants. Specific requirements shall be contained in grant agreements.

(5) UMTA grantees may retain program income for allowable capital or operating expenses.

(6) For grants awarded under Section 9 of the UMT Act of 1964, as amended, any revenues received from the sale of advertising and concessions in excess of fiscal year 1985 levels shall be excluded from program income.

(7) 23 U.S.C. 156 requires that States shall charge fair market value for the sale, lease, or use of right-of-way airspace for non-transportation purposes and that such income shall be used for projects eligible under 23 U.S.C.

g. Section 18.31 is amended by adding paragraph (d) to read as follows:

§ 18.31 Real property.

(d) If the conditions in 23 U.S.C. 103(e) (5), (6), or (7), as appropriate, are met and approval is given by the Secretary, States shall not be required to repay the Highway Trust Fund for the cost of right-of-way and other items when certain segments of the Interstate System are withdrawn.

h. Section 18.36 is amended by adding paragraphs (j) through (t) to read as follows:

§ 18.36 Procurement.

(j) 23 U.S.C. 112(a) directs the Secretary to require recipients of highway construction grants to use bidding methods that are "effective in securing competition." Detailed construction contracting procedures are contained in 23 CFR Part 635, Subpart A.

(k) Section 3(a)(2)(C) of the UMT Act of 1964, as amended, prohibits the use of grant or loan funds to support procurements utilizing exclusionary or discriminatory specifications.

(l) 46 U.S.C. 1241(b)(1) and 46 CFR Part 381 impose cargo preference requirements on the shipment of foreign made goods.

(m) Section 165 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1601, Section 337 of the Surface Transportation and Uniform

Relocation Assistance Act of 1937, and 49 CFR Parts 660 and 661 impose Buy America provisions on the procurement of foreign products and materials.

(n) Section 105(f) of the Surface Transportation Assistance Act of 1982, section 106(c) of the Surface Transportation and Uniform Relocation Assistance Act of 1987, and 49 CFR Part 23 impose requirements for the participation of disadvantaged business enterprises.

(o) Section 308 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 1068(b)(2), authorizes the use of competitive negotiation for the purchase of rolling stock as appropriate.

(p) 23 U.S.C. 112(b) provides for an exemption to competitive bidding requirements for highway construction contracts in emergency situations.

(q) 23 U.S.C. 112 requires concurrence by the Secretary before highway construction contracts can be awarded, except for projects authorized under the provisions of 23 U.S.C. 171

(r) 23 U.S.C. 112(e) requires standardized contract clauses concerning site conditions, suspension or work, and material changes in the scope of the work for highway construction contracts.

(s) 23 U.S.C. 140(b) authorizes the preferential employment of Indians on Indian Reservation road projects and contracts.

(t) FHWA, UMTA, and Federal Aviation Administration (FAA) grantees and subgrantees shall extend the use of qualifications-based (e.g., architectural and engineering services) contract selection procedures to certain other related areas and shall award such contracts in the same manner as Federal contracts for architectural and engineering services are negotiated under Title IX of the Federal Property and Administrative Services Act of 1949, or equivalent State (or airport sponsor for FAA) qualifications-based requirements. For FHWA and UMTA programs, this provision applies except to the extent that a State adopts or has adopted by statute a formal procedure for the procurement of such services.

i. Section 18.40 is amended by adding paragraph (c)(1) to read as follows:

§ 18.40 Monitoring and reporting program performance.

(c) * * *
(1) Section 12(h) of the UMT Act of 1964, as amended, requires pre-award testing of new buses models.

j. Section 18.41 is amended by adding paragraph (f) to read as follows:

§ 18.41 Financial reporting.

(f) Notwithstanding the provisions of paragraphs (a)(1) of this section, recipients of FHWA and National Highway Traffic Safety Administration (NHTSA) grants shall use FHWA, NHTSA or State financial reports.

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Text of the Common Rule

The text of the common rule as adopted by the agencies in this document appears below.

PART _____—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

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Sec.

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- ___3 Definitions.
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Subpart D—After-the-Grant Requirements

- ___50 Closeout.
- ___51 Later disallowances and adjustments.
- ___52. Collection of amounts due.

Subpart E—Entitlements (Reserved)

Subpart A—General

§ 1. Purpose and scope of this part.

This part establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§ 2. Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§ 3. Definitions.

As used in this part:

"Accrued expenditures" mean the charges incurred by the grantee during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and (3) other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" means the sum of: (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Acquisition cost" of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

"Administrative" requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from "programmatic" requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

"Awarding agency" means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the grant.

"Cash contributions" means the grantee's cash outlay, including the

outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

"Cost sharing or matching" means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

"Cost-type contract" means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

"Equipment" means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

"Expenditure report" means: (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report); (2) for construction grants, the SF-271 "Outlay Report and Request for Reimbursement" (or other equivalent report).

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

"Government" means a State or local government or a federally recognized Indian tribal government.

"Grant" means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include

assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

"Grantee" means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

"Local government" means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

"Obligations" means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the grantee during the same or a future period.

"OMB" means the United States Office of Management and Budget.

"Outlays" (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

"Prior approval" means documentation evidencing consent prior to incurring specific cost.

"Real property" means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

"Share", when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

"Subgrant" means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "grant" in this part.

"Subgrantee" means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

"Supplies" means all tangible personal property other than "equipment" as defined in this part.

"Suspension" means depending on the context, either (1) temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant, or (2) an action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

"Termination" means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. "Termination" does not include: (1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period; (2) Withdrawal of the unobligated balance

as of the expiration of a grant; (3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or (4) voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

"Terms of a grant or subgrant" mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

"Third party in-kind contributions" mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

"Unliquidated obligations" for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

"Unobligated balance" means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 4.4 Applicability.

(a) *General.* Subparts A–D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 4.6, or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and Titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of Title V, Mental

Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(C); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI–AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) *Entitlement programs.* Entitlement programs enumerated above in § 4(a) (3)-(8) are subject to Subpart E.

§ 5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 6.

§ 6 Additions and exceptions

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the Federal Register.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 10 Forms for applying for grants.

(a) *Scope.* (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) *Authorized forms and instructions for governmental organizations.* (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used

to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF-424 facesheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 11 State plans.

(a) *Scope.* The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, "Intergovernmental Review of Federal Programs," States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) *Requirements.* A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) *Assurances.* In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions.

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) *Amendments.* A State will amend a plan whenever necessary to reflect: (1) New or revised Federal statutes or regulations or (2) a material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 12 Special grant or subgrant conditions for "high-risk" grantees.

(a) A grantee or subgrantee may be considered "high risk" if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions and

(4) The method of requesting reconsideration of the conditions/restrictions imposed.

Subpart C—Post-Award Requirements
Financial Administration

§ 20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making

disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 21 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR Part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) *Working capital advances.* If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash or a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash

disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) *Effect of program income, refunds, and audit recoveries on payment.* (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) *Withholding payments.* (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold payments for proper charges incurred by grantees or subgrantees unless—

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) *Cash depositories.* (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) *Interest earned on advances.* Except for interest earned on advances of funds exempt under the

Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

§ 22 Allowable costs.

(a) *Limitation on use of funds.* Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A-87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A-122 as not subject to that circular.	OBM Circular A-122.
Educational institutions.....	OMB Circular A-21.
For-profit organization other than a hospital and an organization named in OMB Circular A-122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 23 Period to availability of funds.

(a) *General.* Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) *Liquidation of obligations.* A grantee must liquidate all obligations incurred under the award not later than

90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF-269). The Federal agency may extend this deadline at the request of the grantee.

§ 24 Matching or cost sharing.

(a) *Basic rule: Costs and contributions acceptable.* With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) *Qualifications and exceptions—(1) Costs borne by other Federal grant agreements.* Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) *General revenue sharing.* For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) *Cost or contributions counted towards other Federal costs-sharing requirements.* Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) *Costs financed by program income.* Costs financed by program income, as defined in § 25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 25(g).)

(5) *Services or property financed by income earned by contractors.* Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party

awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) *Records.* Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) *Special standards for third party in-kind contributions.* (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) *Valuation of donated services—(1) Volunteer services.* Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee

or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) *Employees of other organizations.* When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) *Valuation of third party donated supplies and loaned equipment or space.* (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) *Valuation of third party donated equipment, buildings, and land.* If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated

land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) *Valuation of grantee or subgrantee donated real property for construction/acquisition.* If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) *Appraisal of real property.* In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 25 Program income.

(a) *General.* Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) *Definition of program income.* Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. "During the grant period" is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) *Cost of generating program income.* If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) *Governmental revenues.* Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) *Royalties.* Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant agreement or Federal agency regulations as program income. (See § 34.)

(f) *Property.* Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 31 and 32.

(g) *Use of program income.* Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) *Deduction.* Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) *Addition.* When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) *Cost sharing or matching.* When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) *Income after the award period.* There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 26 Non-Federal audit.

(a) *Basic Rule.* Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide \$25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, "Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations" have met the audit requirement. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 36 shall be followed.

Changes, Property, and Subawards

§ 30 Changes

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes.* (1) *Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and nonconstruction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget form the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that

purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) *Disposition*. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title*. Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property*. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) *Transfer of title*. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 32.32 Equipment.

(a) *Title*. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *States*. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) *Use*. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) *Management requirements*. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) *Disposition*. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment*. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title*. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third part named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow

§ 32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

§ 36 Procurement

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

- (i) The employee, officer or agent,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing

new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency.

Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference.

Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which

unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) *Methods of procurement to be followed.* (1) Procurement by *small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than \$25,000 in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources.

(2) Procurement by *sealed bids* (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E

professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation.

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) *Contracting with small and minority firms, women's business enterprise and labor surplus area firms.*

(1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2)(i) through (v) of this section.

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § _____.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review

generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review [delete ";"] procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed \$25,000 and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed \$25,000, specifies a "brand name" product; or

(iv) The proposed award over \$25,000 is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than \$25,000.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding \$100,000, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this Section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts other than small purchases)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Part 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

§ ____37 Subgrants.

(a) *States.* States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with Section ____42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) *All other grantees.* All other grantees shall follow the provisions of this part which are applicable to awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) *Exceptions.* By their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section ____10;

(2) Section ____11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR Part 205, cited in § ____21; and

(4) Section ____50.

Reports, Records, Retention, and Enforcement

§ ____40 Monitoring and reporting program performance.

(a) *Monitoring by grantees.* Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being

achieved. Grantee monitoring must cover each program, function or activity.

(b) *Nonconstruction performance reports.* The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a grantee, the Federal agency may extend the due date for any performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) *Construction performance reports.* For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) *Significant developments.* Events may occur between the scheduled

performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) *Waivers, extensions.* (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 41 Financial Reporting.

(a) *General.* (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters of credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) *Financial Status Report.*—(1) *Form.* Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 41(e)(2)(iii) of this section.

(2) *Accounting basis.* Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) *Frequency.* The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) *Due date.* When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) *Federal Cash Transactions Report.*—(1) *Form.* (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as

appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(3) *Cash in hands of grantees.* When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) *Frequency and due date.* Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) *Request for advance or reimbursement—(1) Advance payments.* Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 41(b)(3).

(e) *Outlay report and request for reimbursement for construction programs.* (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 41(b)(3).

(2) Grants that support construction activities paid by letter of credit,

electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 41(b)(3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 41(b)(2).

§ 42 Retention and access requirements for records.

(a) *Applicability.* (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this Part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 36(i)(10).

(b) *Length of retention period.* (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use.

The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) *Starting date of retention period—*

(1) *General.* When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) *Real property and equipment records.* The retention period for real property and equipment records starts from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) *Records for income transactions after grant or subgrant support.* In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) *Indirect cost rate proposals, cost allocations plans, etc.* This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or

computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) *Substitution of microfilm.* Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) *Access to records—(1) Records of grantees and subgrantees.* The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) *Expiration of right of access.* The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) *Restrictions on public access.* The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ _____.43 Enforcement.

(a) *Remedies for noncompliance.* If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the awarding agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program.

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) *Hearings, appeals.* In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to Debarment and Suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to "Debarment and Suspension" under E.O. 12549 (see § _____.35).

§ _____.44 Termination for convenience.

Except as provided in § _____.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § _____.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ _____.50 Closeout.

(a) *General.* The Federal agency will close out the award when it determines that all applicable administrative

actions and all required work of the grant has been completed.

(b) *Reports.* Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) *Final performance or progress report.*

(2) *Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF-271) (as applicable.)*

(3) *Final request for payment (SF-270) (if applicable.)*

(4) *Invention disclosure (if applicable.)*

(5) *Federally-owned property report:* In accordance with § _____.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) *Cost adjustment.* The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) *Cash adjustments.* (1) The Federal agency will make prompt payment to the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ _____.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § _____.42;

(d) Property management requirements in §§ _____.31 and § _____.32; and

(e) Audit requirements in § _____.26.

§ _____.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal

Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlement [Reserved]

[FR Doc. 88-5251 Filed 3-10-88; 8:45 am]

BILLING CODES 3410-KS-M, 6450-0-M, 8025-01-M, 3510-FE-M, 4710-2Y-M, 4210-32-M, 4410-18-M, 4510-23-M, 6732-01-M, 3810-01-M, 4000-01-M, 7515-01-M, 8320-01-M, 6560-50-M, 4310-RF-M, 6718-21-M, 4150-04-M, 7555-01-M, 7537-01-M, 7536-01-M, 7036-01-M, 6050-28-M, 6340-01-M, 4910-62-M